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IN THE UNITED STATES DISTRICT COURT
FOR
THE MIDDLE DISTRICT OF ALABAMA

THE UNITED STATES
OF AMERICA

vs.

CRIMINAL ACTION NO.
3:07-cr-313-MHT

PIERRE MARCELLO GUNNINGS

VOLUME I OF II
1ST DAY OF
JURY TRIAL PROCEEDINGS

* * * * *

HEARD BEFORE: The Hon. Myron H. Thompson
HEARD AT: Opelika, Alabama
HEARD ON: May 12, 2008
APPEARANCES: Kent Brunson, Esq.
Danielle Mason, Esq.
Donnie W. Bethel, Esq.

MITCHELL P. REISNER, CM, CRR
Official U. S. Court Reporter
Middle District of Alabama
(334) 265-2500

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1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HEARD BEFORE THE
2 HON. MYRON H. THOMPSON ON MAY 12, 2008 AT THE UNITED STATES
COURTHOUSE IN MONTGOMERY, Alabama:

3

4

PRELIMINARY DISCUSSION

5

(THE JURY IS NOT PRESENT):

6

7

THE COURT: How long do you need for your opening
statements?

8

MR. BRUNSON: Ten minutes, Your Honor.

9

MR. BETHEL: That will be sufficient, Your Honor.

10

THE COURT: Ten minutes it is for each side.

11

Are your witnesses here, Mr. Brunson?

12

13

MR. BRUNSON: Your Honor, I haven't had a chance to
check. I know during jury selection your law clerk had told
me one had arrived. I don't know -- There were two who were
supposed be here at eleven.

16

17

THE COURT: Have your witnesses here at one-ten and
we'll swear in all witnesses.

18

19

Any witnesses you have, Mr. Bethel, have them here
at one-ten.

20

21

I considered your notice of intent to use four oh
four B evidence. I'll sustain the objection at this time.

22

I'll reconsider it when you're ready to use that evidence and

23

I'll hear argument at that time. In other words, you're not

24

to mention it during your opening statement.

25

Anything else?

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Middle District of Alabama

(334) 265-2500

1 MR. BETHEL: Yes, Your Honor. I believe there are
2 a couple of preliminary matters we could take up at this
3 time.

4 THE COURT: What are they?

5 MR. BETHEL: Number one, Mr. Brunson and I had an
6 oral stipulation as to the fact that Mr. Gunnings was, in
7 fact, under a felony indictment, had been arraigned under a
8 felony indictment as of the date alleged, that is December
9 sixteenth, two thousand and six.

10 THE COURT: You need to present that stipulation to
11 the jury later.

12 MR. BETHEL: What I'm saying is an *Old Chief*
13 stipulation, a felon in possession.

14 THE COURT: Very good.

15 MR. BRUNSON: Your Honor, I was not asked about
16 this until this morning. Generally, when we have a *Old Chief*
17 objection there is a written stipulation that is presented
18 that the jurors can have, and I don't have the ability
19 without a computer, or even a typewriter here, to prepare a
20 stipulation at this time.

21 THE COURT: So what are you telling me?

22 MR. BRUNSON: I'm telling you Mr. Bethel asked me
23 about this this morning, and I have agreed but I'm not able
24 to give him a written stipulation.

25 THE COURT: Do you wish to prepare one?

1 MR. BETHEL: If he'd like to prepare one this
2 evening and bring it back to court tomorrow, that's fine with
3 us, Your Honor.

4 MR. BRUNSON: I would ask Mr. Bethel, since he
5 brought this up, if he has the ability to prepare one.
6 Because I'm not going back to Montgomery. I don't have
7 access to a computer.

8 MR. BETHEL: I'll be happy to do that, Your Honor.

9 THE COURT: Very good.

10 Anything else?

11 MR. BETHEL: One other issue, Your Honor. I would
12 like to voir dire Agent Panoke before he testifies. I may
13 have an objection to some of his testimony that I would like
14 to keep from the jury, depending upon what his answers to a
15 few questions may be.

16 THE COURT: Is he your first witness?

17 MR. BRUNSON: Yes, Your Honor.

18 THE COURT: Okay. What else?

19 MR. BETHEL: That's it, Your Honor.

20 THE COURT: Okay. What in particular do you wish
21 to ask him about?

22 MR. BETHEL: There's a couple of statements, two
23 lines in the narrative that we were provided about his
24 telephone conversation with Mr. Gunnings. He makes a couple
25 of statements Mr. Gunnings has made, and it's not clear

1 whether it was a spontaneous declaration, whether it was in
2 response to questions by Agent Pinoke. And that's the
3 substance of my voir dire.

4 MR. BRUNSON: Your Honor, my position would be that
5 he was not in custody in any event. This was a telephone
6 situation. It was not a custodial situation.

7 THE COURT: Okay, then. Why don't we take this up
8 at this time right now.

9 Swear in the agent.

10 W I L L P A N O K E,
11 the witness herein, having first been duly sworn or
12 affirmed to tell the truth, was examined and testified as
13 follows:

14 DIRECT VOIR DIRE EXAMINATION

15 BY MR. BETHEL OF WILL PANOKE.

16 (THE JURY IS NOT PRESENT):

17 THE COURT: Go ahead.

18 Q. Agent Panoke, I wanted to ask you about a telephone
19 conversation that you had with Mr. Gunnings on the thirtieth
20 of March.

21 A. Yes, sir?

22 Q. According to the notes in the narrative that you provided
23 to Mr. Brunson, you called Mr. Gunnings and identified
24 yourself?

25 A. That's correct, yes, sir.

1 Q. It says that you advised Mr. Gunnings that the A. T. F.
2 was conducting a federal firearms investigation involving his
3 attempted firearms purchase.

4 A. Correct.

5 Q. Let me just start with a couple of predicates. Was this
6 conversation recorded?

7 A. It was not.

8 Q. Was there anybody else on another line who was listening
9 in to this conversation?

10 A. No, sir.

11 Q. So this would have been just between you and Mr.
12 Gunnings?

13 A. That's correct.

14 Q. Now it says that you explained that the A. T. F. would
15 like to arrange an in-person interview with Mr. Gunnings as
16 to be able to advise him of his constitutional rights.

17 A. Yes, sir.

18 Q. Did you explain to him why you wanted to advise him of
19 his constitutional rights?

20 A. I did not. I merely stated that I wanted to arrange an
21 in-person interview and to advise him of his constitutional
22 rights.

23 Q. But you told him you wanted to advise him of his
24 constitutional rights, but you didn't tell him why?

25 A. I felt that we were conducting a federal investigation

1 and I assumed that he would have understood.

2 Q. Why would you assume that he would understand what he was
3 being investigated for if you didn't advise him of it?

4 A. I don't know.

5 Q. All right. And the next thing it says is simply,
6 "Gunnings stated he did not receive the weapon because he was
7 denied."

8 A. That's correct.

9 Q. What was your response to that statement?

10 A. Well I told him before he made any statements or before
11 we discussed anything further, again, I wanted to talk with
12 him in person and just have a consensual interview with
13 him.

14 Q. The next thing that you note in your narrative is this:
15 "Gunnings also stated that he did not know he was under
16 indictment for his charges in Georgia and he could not
17 purchase any firearms."

18 A. That's correct.

19 Q. How is it that he made that statement?

20 A. Well I told him that the reason why we were conducting an
21 investigation, he answered one of the questions on the form
22 to know that question being eleven B where it asked him
23 whether he was under indictment or information for any felony
24 charges anywhere. And he said he didn't know he was under
25 indictment.

1 Q. And it's that is why you wanted to have a face-to-face
2 interview and advise him of his constitutional rights?

3 A. Correct.

4 Q. Because you were investigating him for that particular
5 violation of federal law?

6 A. That's correct.

7 MR. BETHEL: No further questions, Your Honor.

8 CROSS VOIR DIRE EXAMINATION

9 BY MR. BRUNSON OF WILL PANOKE

10 (THE JURY IS NOT PRESENT):

11 Q. What was Mr. Gunnings' response to you having an in-face
12 meeting?

13 A. He told me to contact his attorney and arrange a
14 meeting.

15 Q. At this time had you ever met Gunnings?

16 A. I had not.

17 Q. Have you told the Court the substance in total of this
18 conversation?

19 A. Yes, sir. The conversation was very brief. It sounded
20 like he was driving or something. Probably preoccupied, so
21 it was a really short interaction.

22 Q. Did you call him, or did he call you?

23 A. I called him.

24 Q. On a cell phone, I take it, if he was driving?

25 A. I think so. I assumed so.

1 Q. Did you tell him that he was subject to arrest?

2 A. I did not.

3 Q. Was he under arrest?

4 A. He was not.

5 THE COURT: When he made these statements to you,
6 were they in response to any questions from you?

7 THE WITNESS: No, sir.

8 THE COURT: He volunteered them?

9 THE WITNESS: That's correct, sir.

10 Q. Did you follow up? Did you ask him if he knew that he
11 was under indictment?

12 A. I did not. I didn't ask him any questions.

13 MR. BRUNSON: No further questions.

14 THE COURT: Mr. Bethel?

15 MR. BETHEL: No further questions, Your Honor.

16 THE COURT: Thank you.

17 (Whereupon the witness, Will Panoke, stepped down
18 from the stand.)

19 THE COURT: Mr. Bethel?

20 MR. BETHEL: Your Honor, I would first object to
21 any testimony from this witness concerning Mr. Gunnings'
22 invocation of his right to counsel.

23 THE COURT: You mean the statement that he wished
24 to speak with counsel?

25 MR. BETHEL: Yes, Your Honor.

1 THE COURT: Just that statement itself?

2 MR. BETHEL: Yes.

3 THE COURT: Mr. Brunson?

4 MR. BRUNSON: Your Honor, I have the agent here.

5 He understands he is not under -- he is not to answer even if
6 he understands a question I asked.

7 THE COURT: He's not to mention that Mr. Gunnings
8 asked to speak to counsel.

9 MR. BRUNSON: Yes, sir.

10 THE COURT: What else?

11 MR. BETHEL: Your Honor, I further object to any
12 testimony from this witness concerning Mr. Gunnings'
13 statement that he did not know he was under indictment. That
14 statement was made, number one, after Agent Panoke had told
15 already him that the reason he wanted to see him was to
16 advise him of his constitutional rights and there was an
17 ongoing federal firearms investigation. So clearly there's
18 no dispute that Mr. Gunnings was a suspect at the time, and
19 that he was, in fact, a suspect of the investigation that was
20 ongoing.

21 As to whether or not there was a question, the fact
22 is that the statement that Agent Panoke made is what prompted
23 Mr. Gunnings --

24 THE COURT: What statement?

25 MR. BETHEL: That statement being that he had

1 filled out the form checking "no" on the box that said he was
2 indictment. That statement alone is going to prompt a
3 response. It may not be definite after an interrogative, but
4 that statement alone after he has notified Mr. Gunnings that
5 he's under investigation and he wants to advise him of his
6 constitutional rights, i.e., *Miranda* rights, to make that
7 statement clearly is going to evoke a response. And that's
8 exactly what happened. And that response should have been --
9 That statement should not have been made until such time as
10 Agent Panoke did, in fact, advise Mr. Gunnings of his *Miranda*
11 rights.

12 THE COURT: Was Mr. Gunnings in custody?

13 MR. BETHEL: He was not in custody, Your Honor.

14 THE COURT: If he wasn't in custody, then what's
15 the basis for the suppression?

16 MR. BETHEL: The basis for the suppression is that
17 he was a suspect in a criminal investigation, Agent Panoke
18 knew that he was a suspect in a criminal investigation --

19 THE COURT: Do you have any law that the supports
20 that?

21 MR. BETHEL: Not one bit, Your Honor.

22 THE COURT: Okay. Thank you very much.

23 MR. BETHEL: You're welcome, Your Honor.

24 THE COURT: Mr. Brunson?

25 MR. BRUNSON: Nothing further, Your Honor.

1 THE COURT: Okay. I'll let you know about that
2 after lunch.

3 Is that the only statement we're talking about, by
4 the way?

5 MR. BETHEL: Yes, other than the one we've already
6 discussed.

7 THE COURT: The one we've already discussed, that
8 objection is sustained.

9 MR. BETHEL: That's it, Your Honor.

10 THE COURT: Very good. I'll let you know after
11 come back at one-ten.

12 (Whereupon, the luncheon recess was taken.)

13 DISCUSSION IN OPEN COURT

14 (THE JURY NOT PRESENT):

15 THE COURT: Anything else, Counsel, before we get
16 started and I rule on this evidentiary matter?

17 MR. BETHEL: No, Your Honor.

18 THE COURT: Mr. Brunson, anything?

19 MR. BRUNSON: No, Your Honor.

20 THE COURT: The Court considers the defendant's
21 challenge to the testimony of the officer to be a motion to
22 suppress a statement, and the motion is denied. The law is
23 clear that *Miranda* is required only if the defendant was both
24 in custody and being interrogated. And the Court would cite
25 for that proposition *United States vs. Grimes*, one forty-two

1 F. Third, thirteen forty-two at -- I think it's at page
2 thirteen forty-eight but I'm not sure.

3 But anyway, it's clear here that the defendant was
4 not in custody under any circumstances. The mere fact that
5 he was being informed of the reasons that the officer wanted
6 to see him did not convert the conversation to one which the
7 defendant was in custody.

8 Secondly, the defendant was not being interrogated.
9 While it is true that the term "interrogation" refers not
10 only to express questioning but also to words or actions on
11 the part of the police, that the police should know or
12 reasonably likely to elicit an interrogating response from
13 the suspect. Here the officer was merely explaining why he
14 wished to meet with the defendant later, and while some
15 people might want to answer that informative statement with
16 the statement, the informant statement itself was not
17 reasonably likely to elicit in particular an incriminating
18 response, which is what the Supreme Court has stated
19 constitutes interrogation.

20 In that regard, I refer to the case of *Rhode Island*
21 *versus Inis*, I-n-i-s, four forty-six U. S. two ninety-one at
22 page three oh one, a nineteen eighty Supreme Court case.

23 Anything else?

24 MR. BRUNSON: No. Thank you, Your Honor.

25 MR. BETHEL: Just one other thing, Your Honor.

1 Since we have agreed with the Government concerning a
2 stipulation involving Mr. Gunnings, that that is that he was
3 under indictment in December of two thousand and six. As a
4 matter of a motion in limine, I would object to his
5 discussion of any of the particulars of the indictment
6 itself.

7 MR. BRUNSON: Your Honor, here is the stipulation
8 that I prepared. Mr. Bethel has agreed with this language.
9 "The parties agree and stipulate that the defendant Pierre
10 Marcello Gunnings had been invited for a felony offense prior
11 to December sixteenth, two thousand six when he completed A.
12 T. F. form forty-four seventy-three at Pawn Central
13 Incorporated when he attempted to purchase a firearm.

14 MR. BETHEL: Yes, we stipulate to that, Your Honor.

15 THE COURT: Very good.

16 Bring in the jury.

17 How long do you need -- oh, we said ten minutes to
18 a side.

19 MR. BRUNSON: Yes, Your Honor.

20 MR. BETHEL: Your Honor, it appears the
21 Government's witnesses are in the courtroom, and we would
22 invoke the rule.

23 THE COURT: Bring your witnesses forward and we'll
24 swear in all witness.

25 Does Mr. Gunnings right now think he might testify?

1 MR. BETHEL: We will reserve the right to make that
2 decision.

3 THE COURT: Let's just swear him in right now just
4 in case he does.

5 MR. BETHEL: All right, Your Honor.

6 (Whereupon, all prospective witnesses currently
7 present were duly sworn.)

8 THE COURT: All right. Bring in the jury.

9 COURT OFFICER: Jury entering.

10 (Whereupon, the jury was escorted into the
11 courtroom.)

12 THE COURT: As I said earlier, you are the jury
13 that will try the case of *United States of America vs. Pierre*
14 *Marcello Gunnings*.

15 At this time I'm going to ask that you stand again.
16 Please stand, and the clerk will swear you in.

17 (Whereupon, the petit jury was duly sworn by the
18 courtroom deputy clerk.)

19 THE COURT: Be seated.

20 PRETRIAL JURY CHARGE:

21 THE COURT: Members of the jury, you have now been
22 sworn as the jury to try this case. By your verdict, you
23 will decide disputed issues of fact. I will decide all
24 questions of law that arise during the trial, and before you
25 retire to deliberate at the close of the case I will instruct

1 you on the rules of law that you must follow and apply in
2 reaching your decision in this case -- that is, your verdict.

3 Now because you will be called upon to decide the
4 facts of the case, you should give careful attention to the
5 testimony and evidence presented for your consideration
6 during the trial. But you should keep an open mind and
7 should not form or state any opinion about the case one way
8 or the other until you have heard all of the evidence and
9 until you've have had the benefit of the closing arguments of
10 the attorneys as well as my instructions to you on the
11 applicable law.

12 Now during the trial you must not discuss the case
13 in any manner among yourselves or with anyone else. Nor
14 should you permit anyone to discuss the case in your
15 presence. And insofar as the attorneys are concerned, as
16 well as others whom you may come to recognize as having some
17 connection with this case, in order to avoid even the
18 appearance of impropriety, as I said before you should have
19 no contact with these persons while you are serving on this
20 jury.

21 Now the reasons for these cautions lie in the fact
22 that it will be your duty to decide this case only on the
23 basis of the testimony and evidence presented during the
24 trial without consideration of any other matters whatsoever.

25 Now a question sometimes arises as to whether

1 individual members of the jury will be permitted to take
2 notes during the trial. If you would like to take notes you
3 may do so. Indeed, we have furnished you with pads and
4 pencils. On the other hand, you are not required to take
5 notes if you do not want to. That is left up to you
6 individually. If you do decide to take notes, be careful not
7 to get so involved in note-taking that you become distracted
8 from the ongoing proceedings. Also, your notes should be
9 used only as your aids to your memory, and if your memory
10 should later differ from your notes you should rely upon your
11 memory and not necessarily your notes.

12 If you do not take notes you should rely upon your
13 own independent recollection or memory of what the testimony
14 was, and you should not be unduly influenced by the notes of
15 other jurors. Notes are not entitled to any greater weight
16 or believability than the recollection or impression of each
17 juror as to what the testimony was.

18 Now from time to time during the trial I may be
19 called upon to make rulings of law on objections or motions
20 made by the attorneys. You should not infer or conclude from
21 any ruling that I may make, that I have any opinion on the
22 merits of this case favoring one side or the other. And if I
23 should sustain an objection to a question that goes
24 unanswered by a witness, you should not speculate on what the
25 answer might have been if given, nor should you draw any

1 inferences or conclusions from the unanswered question
2 itself.

3 Now during the trial it may be necessary for me to
4 confer with the attorneys from time to time out of your
5 hearing with regard to matters of law or procedure that
6 require consideration by the Court alone -- that is by me
7 alone. On some occasions you may even be excused from the
8 courtroom for this purpose. Now I will try to limit these
9 interruptions as much as possible, but I ask that you be
10 patient even though the case may seem to go slowly at times.
11 I'll further ask that you remember at all times the
12 importance of the matter that you are here to decide.

13 Now we will begin by affording the attorneys for
14 each side an opportunity to make openings statements to you
15 in which they may explain the issues in the case and
16 summarize the facts that they expect the evidence will show.

17 Now after all of the testimony and evidence has
18 been presented, the lawyers, that is the attorneys, will be
19 given another opportunity to address you at the end of the
20 trial and make their summations, or final arguments. The
21 statements that the attorneys make now, as well as the
22 arguments that they present at the end of the trial, are not
23 to be considered by you either as evidence, which will come
24 only from witnesses and exhibits, or as your instructions on
25 the law, which will come only from me. Nevertheless, these

1 statements and arguments are intended to help you understand
2 the issues and the evidence as it comes in, as well as the
3 positions taken by both sides.

4 Now at this time I'm going to the ask that you give
5 your close attention to the attorneys as they make their
6 opening statements.

7 Mr. Brunson.

8 OPENING STATEMENTS:

9 MR. BRUNSON: May it please the court, ladies and
10 gentlemen of the jury.

11 I know it hasn't been too long since we were
12 introduced, but I'll very briefly tell you that I am Kent
13 Brunson from the United States' Attorney's Office, assisted
14 by Will Panoke with the Bureau of Alcohol, Tobacco, Firearms
15 and Explosives. And here for the defendant in this case is
16 Donnie Bethel and Danielle Mason.

17 As the judge has just told you, you are here, you
18 have been selected from a large number people who were here
19 this morning to hear a very important case for both sides.

20 This case that brought to you Opelika today started
21 with an indictment that was returned charging Mr. Gunnings
22 with two counts. Both of these counts are a violation of
23 Title Eighteen of the United States Code. Count one charges
24 A violation of Title Eighteen, Section nine twenty-two A six.
25 The other one is a violation of Title Eighteen, Section nine

1 twenty-four A one A.

2 The nine twenty-two A six violation makes it a
3 federal crime or an offense for anyone to possess or buy a
4 firearm, to make a false statement to a licensed firearms
5 dealer. To prove that case you must believe and agree beyond
6 a reasonable doubt, all of you unanimously, that first the
7 defendant acquired or attempted to acquire a firearm from a
8 federally licensed firearm dealer; two, that in doing so the
9 defendant knowingly made a false or fictitious statement
10 orally or in writing -- in this case it would be in writing
11 -- that was likely to deceive, and that the subject matter of
12 the false statement was material to the lawfulness of the
13 sale.

14 Now I read that because that's an element, but the
15 materiality part will be decided by the judge. He will
16 determine after the evidence is in if this was a material
17 false statement.

18 The nine twenty-four A one A offense was made a
19 federal crime for anyone to knowingly make a false statement
20 or representation with respect to the information that's
21 required to be kept in the records of a personal licensed to
22 sell firearms. That's an F. F. L., federal firearms
23 licensee.

24 The elements in this case are that the defendant
25 knowingly made a false statement or representation, the

1 defendant made the statement or representation to a licensed
2 dealer or manufacturer or collector of firearms, and that the
3 statement pertained to the information that the law requires
4 the dealer or manufacturer or collector to keep.

5 I expect the evidence to show, ladies and
6 gentlemen, that on December the sixteenth, the date charged
7 in the indictment, that's December the sixteenth, two
8 thousand and six, that Mr. Gunnings went to a pawnshop in
9 Opelika, Alabama for the purpose of purchasing a firearm.
10 You'll hear two witnesses for that pawnshop testify that they
11 are federally -- or that pawnshop is a federally firearms
12 licensee. They are required to keep records and documents,
13 and they did so in this case.

14 One of the questions, and a form will be introduced
15 to you, one of the questions on this form is, "Are you under
16 indictment or any information in any court for a felony or
17 any other crime for which the judge could imprison you for
18 more than one year?" I expect the evidence to show that in
19 September -- this happened in December of two thousand six --
20 in September of two thousand six Mr. Gunnings was indicted in
21 Georgia. Then in October, on October thirteenth, he was
22 brought into court and told that he was charged in a felony
23 offense.

24 Now the offense to you is not material. It's what
25 is important is his knowledge that he was under indictment

1 when he falsely filled out that form.

2 As the judge has already told you, only consider
3 the evidence that comes from the witness stand from the
4 witnesses and the documents that are introduced from the
5 witnesses. Now in this case there is one important
6 exception, and that is the parties have agreed, stipulated,
7 and a written stipulation will go to you when you go to
8 deliberate this verdict, that Mr. Gunnings admits that prior
9 to December the sixteenth, two thousand six, that he had been
10 indicted for a felony offense.

11 That is a written stipulation, so when that comes
12 as one of the elements you can skip over that because the
13 parties agree to that. And it's not important for you to
14 consider what the offenses are. It's just that he was
15 indicted, under indictment when he applied for this firearm
16 on December the sixteenth two thousand six.

17 Another thing that's very important that you're
18 going to carry into that jury room with you is your common
19 sense. Again, you were narrowed down for your own particular
20 importance in this case to consider the facts of this case,
21 and part of that is your common sense. You're not expected
22 to leave that out. You're not to communicate with each other
23 and discuss this case until you have been given the case by
24 the judge after you have been charged.

25 When you go to deliberate, take the evidence with

1 you seriously, like both parties are entitled, like your oath
2 requires. And use your common sense and reach a fair verdict
3 beyond a reasonable doubt. And it has to be unanimous.

4 None of the witnesses in this case are going to
5 tell you all of the elements, that everything you need to
6 know about this case. Agent Panoke is going to give you a
7 small piece of the puzzle. An Assistant District Attorney
8 from Georgia is going to give you a small piece of the
9 puzzle. The two people from the pawnshop are going to come
10 and testify and give you their evidence in this case. You
11 will have as evidence the form that was filled out that
12 contains the false statement.

13 This case will proceed through my brief
14 introductory remarks, Mr. Bethel's, and then we'll begin to
15 call witnesses, first for the Government and then for the
16 defendant.

17 Once that is done, the attorneys get to conclude,
18 as Judge Thompson has already told you, by stating to you the
19 facts that they want you to consider in reaching your
20 verdict. After that is completed, he will then charge you on
21 the law. You are bound to follow his charge on the law.
22 That's the one thing that you need to listen to and follow
23 his instructions carefully. After that, it's your case. You
24 go back to deliberate and you reach a fair and impartial
25 verdict. That's what you're here to do.

1 I thank you for your attention.

2 OPENING STATEMENTS:

3 THE COURT: Mr. Bethel?

4 MR. BETHEL: Thank you, Your Honor.

5 May it please the Court, ladies and gentlemen of
6 the jury.

7 Pierre Gunnings can't read. You're going to hear
8 from Mr. Scott Fowler. Mr. Fowler currently works in the
9 construction industry, but some years ago when Mr. Gunnings
10 was in high school, Mr. Fowler was a Special Education
11 teacher at Auburn High School. He has a master's degree in
12 Special Education. He is going to testify. He's going to
13 take the witness stand. He is going to tell you that he
14 taught Pierre for a year while Pierre was in high school, and
15 he is going to tell you that Pierre cannot read. He is going
16 to tell you that Mr. Gunnings certainly can't read words like
17 "felony" and "indictment," the key words that the prosecutor
18 was talking about that got to appear on that form that he
19 filled out.

20 We have a number of witnesses who are going to
21 testify, and they're all going to tell you that Pierre
22 Gunnings can't read. We have several family members who will
23 tell you that it was well known in the family that Pierre
24 Gunnings can't read. We have army buddy of Mr. Gunnings who
25 will tell you that he served with Mr. Gunnings, and that Mr.

1 Gunnings, it was well known in the unit that Mr. Gunnings
2 cannot not read.

3 We have his girlfriend approximately two years ago
4 prior to the time that this indictment was filed in December,
5 prior to the time that Mr. Gunnings went into the pawnshop
6 and filled out that form, and she will tell you that Mr.
7 can't read. That she filled out forms for him. That she
8 read things to him. One of the most important witness you're
9 going to hear from is Ms. Patsy Thomas.

10 Miss Thomas is going to tell you that she also has
11 a Master's degree in education, that she's been working as a
12 volunteer in literacy programs for well on thirty years. And
13 that for the last two years, including the period of time
14 when Mr. Gunnings filled out that form at the pawnshop, that
15 Mr. Gunnings can't read, and she's been tutoring him that
16 very period of time. She will tell you that Mr. Gunnings
17 can't read words like "felony" and "indictment". That's what
18 you're going to hear. And what's key in this case is that
19 word that Mr. Brunson used, "knowingly".

20 The question is when Mr. Gunnings filled out that
21 form, if he knowingly and intentionally falsified that
22 question. If he couldn't read the question and didn't know
23 what the question asked, then he didn't knowingly falsify
24 that form. It's that simple.

25 So the question you're going to have to ask

1 yourself during the course of this trial is did Mr. Gunnings
2 knowingly falsify that form.

3 And as far as indictment goes, we'll concede a
4 number of things. There is no doubt that in September of two
5 thousand six, Mr. Gunnings was indicted, a felony indictment
6 in the state of Georgia. There's no doubt he was arraigned
7 on that charge prior to the time that he went to that
8 pawnshop in Alabama in December. That's not in dispute. We
9 don't dispute that whatsoever.

10 We don't dispute that he filled out that form. And
11 Mr. Fowler and Ms. Thomas will tell you that it's common for
12 someone, the term I will use is "functionally illiterate,"
13 Mr. Flower will tell you, for instance, that Pierre Gunnings
14 is not dumb. He's right. He is very, very good verbally,
15 but he will tell you that he can't make the connection with
16 letters to be able to read.

17 So Mr. Fowler will explain when he testifies that,
18 simply put, Pierre Gunnings can't read and couldn't have
19 filled out that form knowingly. Ms. Thomas is going to tell
20 you exactly the same thing. And as I said, you'll hear from
21 a number of other witnesses who will all tell you that Pierre
22 Gunnings can't read.

23 Now one other question that has to be answered is
24 how in the world did someone get into the Army, taking a test
25 if that person can't read? And there is a simple explanation

1 for that. It's not particularly flattering. The explanation
2 is this: You're going to hear from Mr. Gunnings' brother and
3 Pierre wanted to get into the army, but he knew he wouldn't
4 be able to pass the test. So what happened was his brother
5 will tell you that -- his name is William Gunnings -- that
6 Mr. William Gunnings took Pierre's Social Security card and
7 went down to the army recruiter and he went down and took the
8 test in the name of Pierre Gunnings.

9 Is it something he should have done? Absolutely
10 not. But those are the facts, and that's what you're going
11 to hear the testimony from the witness stand about how Mr.
12 Gunnings got into the army.

13 It's going to be interesting when we look at that
14 form. There are a number of things I'm going to ask you to
15 take a very close look at on that form that was filled out.
16 What I was saying earlier was Mr. Fowler and Ms. Thomas will
17 both tell you that when you have someone who is functionally
18 illiterate, it is not uncommon for them to be able to write
19 simple words that they have to use repeatedly. Things like
20 their name, their address, their phone number. Identifying
21 information. They learn how to write those because they
22 learn how to get by.

23 They will also tell you that not being able to read
24 is something that many of the people they work with are
25 reluctant to admit because, quite simply, it's humiliating

1 and embarrassing for a grown man who is twenty-six years old
2 to have to admit in public, in court, for instance, that he
3 doesn't read. And to have to listen to a parade of witnesses
4 who are going to come in and tell you that they all know that
5 Pierre Gunnings can't read.

6 That's the question in this case. If you look at
7 those two charges in the indictment, those charges are very
8 similar. They happen to be violations of two different laws
9 that there is a slight variation, but I will tell you this,
10 either Mr. Gunnings is guilty of both or he's not guilty of
11 both. There is no way, based on the elements of those
12 offenses the way it's been charged that you could find him
13 guilty of count one and not guilty of count two or the other
14 way around. Either he's guilty or he's not guilty of both
15 those counts.

16 What you're going to find out is, he's not guilty
17 because he didn't knowingly and intentionally falsify that
18 form. And the reason you're going to hear that he didn't
19 knowingly falsify that form is very simply that Pierre
20 Gunnings can't read.

21 THE COURT: First witness.

22 MR. BRUNSON: Will Panoke.

23 W I L L P A N O K E,

24 the witness herein, having first been duly sworn or
25 affirmed to tell the truth, was examined and testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. BRUNSON OF WIL PANOKE:

4 Q. Would you please state your name and how you're employed.

5 A. Sure. My name is Will Panoke, and I'm a special agent
6 with the Bureau of Alcohol, Tobacco and Firearms and
7 Explosives. A. T. F.

8 Q. What are your duties and assignments with A. T. F.?

9 A. I investigate violations against the federal firearms
10 laws, explosive laws, as well as assist local law enforcement
11 on curtailing violent crimes in communities.

12 Q. As far as this particular case goes, did you investigate
13 this case?

14 A. That's correct.

15 Q. What was the complaint, the purpose of your investigating
16 the case?

17 A. We were notified, "we" being the A. T. F. in the
18 Montgomery field office, was notified I'd say somewhere
19 around February of two thousand seven by the U. S. Attorney's
20 Office where they in fact requested us to investigate four
21 separate cases, one of them being or involving Mr. Gunnings
22 who had actually attempted to purchase a firearm and
23 falsified information on the A. T. F. form forty-four
24 seventy-three, which is the form that anyone who wants to
25 purchase a firearm has to complete.

1 Those cases, again, the individual falsified
2 information, so I initiated an investigation to find out the
3 details of the case.

4 MR. BRUNSON: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q. I'm handing you two documents. One has been marked for
7 identification as Government's exhibit one, and the other one
8 is marked Government's exhibit one A, again for
9 identification. Starting with Government's exhibit one, what
10 is that, please?

11 A. This is an actual A. T. F. form forty-four seventy-three
12 that individuals who want to purchase a firearm from a
13 federal firearms licensee, or F. F. L., have to complete to
14 be able to purchase the firearm. And it's a three-page --
15 it's sectioned off in three pages.

16 Q. And those three pages make up the exhibit, all three
17 pages comprise exhibit one?

18 A. Yes.

19 Q. Agent Panoke, in looking at that, can you read anything
20 that has been or may have been written on that page?

21 A. Barely. It appears that there were some writings or
22 notations on this form, but it's not visible anymore.

23 Q. Can you explain to the jury briefly why it's not visible
24 on that form?

25 A. Absolutely. This is the actual form that I took

1 possession of from the F. F. L. here in Opelika, Alabama. I
2 sent this actual form to the Alabama state crime lab to have
3 it analyzed for fingerprints and the chemicals that the
4 latent print examiners use, it causes the ink to disappear.

5 Q. Once you received the form -- well, let me ask, where did
6 you get it?

7 A. I took possession of this form from Pawn Central in
8 Opelika, Alabama.

9 Q. Once you got that, knowing that you were going to send it
10 to the crime lab, did you make a copy?

11 A. Yes, sir, I made several copies of this form.

12 Q. Did you observe the form in its original state prior to
13 it being copied?

14 A. I did.

15 Q. Did you observe -- You said you made a copy. Would you
16 look at one A and see if that is a copy.

17 A. This is in fact an exact photocopy of exhibit one.

18 Q. Did you make that?

19 A. I did.

20 Q. Did you review it after you made it?

21 A. I did.

22 Q. And as you have testified, is it an exact copy?

23 A. Yes, it is.

24 Q. What is the purpose of that form?

25 A. The purpose of the form is by law, federal law, federal

1 firearms licensees are required to take information from the
2 potential customer or the potential gun purchasers to conduct
3 a background investigation. It has a section for them to put
4 their personal information like name, address, date of birth
5 and so forth, as well as it asks a list of questions to
6 determine whether the individual is prohibited or not to
7 purchase a firearm.

8 Q. What would prohibit a person under the law from
9 purchasing a firearm?

10 A. If someone has been convicted of a felony, if someone is
11 under indictment or information of a felony charge, if
12 someone who is an illegal alien, someone who is a fugitive or
13 someone who has renounced their U. S. citizenship, those
14 types of questions are asked on this form.

15 Q. Is one of those questions determined to have an answer
16 untruthfully on that form?

17 A. Yes, sir.

18 Q. And which one is that?

19 A. That would be question eleven B.

20 Q. Would you read that question for the jury.

21 A. Sure.

22 MR. BETHEL: Your Honor, excuse me. What
23 Mr. Brunson is asking this witness to do is to read from a
24 document that has not as yet been admitted in evidence. That
25 would not be proper, since this evidence is not properly

1 before the Court yet.

2 MR. BRUNSON: I would agree, Your Honor, and I
3 would now move to introduce the exhibits as Government's
4 exhibits one and one A.

5 THE COURT: Okay.

6 MR. BETHEL: Your Honor, I do have an objection.
7 That document is hearsay. It can be properly admitted under
8 the business exception to the hearsay rule, but this is not
9 the proper way to lay that that foundation. That would have
10 to come from someone who either reported the information or
11 could say it had been reported contemporaneously with the act
12 that took place, and someone from the business itself. So
13 while it may be properly admitted, it's not properly admitted
14 through this witness, Honor, so I object.

15 MR. BRUNSON: Your Honor, I will tie this up. I
16 have two witnesses from the store and they would testify to
17 that form. If you would like me to excuse Agent Panoke and
18 recall him after I bring those two witnesses forward.

19 THE COURT: I'll allow it conditionally, subject to
20 you showing the business records, and so forth.

21 Q. Tell the jury, if you would, what exactly a federal
22 firearms licensee is.

23 A. Again, a federal firearms licensee, stands for in short
24 an F. F. L. They are required by law and through A. T. F. to
25 follow a list of rules and regulations that have been set

1 forth by the A. T. F. Some of the rules and regulations that
2 are required to be maintained is simply to make sure that all
3 potential gun purchasers or firearms purchasers complete the
4 format of the forty-four seventy-three truthfully, as well as
5 maintain these forms for at least seven years.

6 They're required -- If someone is interested in
7 purchasing a firearm, they have to the call in to the N. I.
8 C. S., which stands for the National Instant Check System,
9 and that branch is comprised of F. B. I. and A. T. F.
10 employees where they conduct background investigations.
11 Basically they run a criminal history on the potential gun
12 purchaser to see if they're actually prohibited or not.

13 They have to keep accurate log books. All the guns
14 or firearms that come into their store, as well as go out of
15 the store. Again, they have to maintain that information for
16 seven years. It's a whole list of rules and regulations that
17 the A. T. F. requires for someone who the wants to be a
18 federal firearms licensee to maintain.

19 Q. Can you look at that form forty-four seventy-three,
20 Government's exhibit one and one A, and tell who completed
21 that form.

22 A. The section with the personal information, it looks like
23 the defendant's, Pierre Gunnings', handwriting. It's
24 separate or different from the Handwriting that's required
25 for the F. F. L. --

1 MR. BETHEL: I'm sorry, Your Honor. I have an
2 objection. It's a conclusionary statement made by this
3 witness that this is Mr. Gunnings' handwriting. That is
4 exactly conclusory. There's been no evidence to establish
5 that this witness is a trained document examiner. He's not a
6 handwriting expert or that he has any independent recognition
7 of Pierre Gunnings' handwriting.

8 MR. BRUNSON: I agree, Your Honor.

9 Q. What name is on that application?

10 A. The name on the application is Pierre Marcello
11 Gunnings.

12 Q. Do you know the requirements of filling out this form
13 forty-four seventy-three?

14 A. I do.

15 Q. What are the requirements?

16 A. The requirements are that the gun purchaser, potential
17 purchaser, completes the first page of the form, and then
18 signs it on the second page under section number sixteen.
19 And then starting on section number eighteen throughout the
20 rest of the form, the F. F. L., or an employee of the F. F.
21 L. completes that section.

22 Q. What date was that form filled out?

23 A. It was signed by, or someone who signed Gunnings' name on
24 December sixteenth, two thousand six.

25 Q. In fact, was this firearm purchased from that pawnshop?

1 A. It was not. The firearm purchase was denied.

2 Q. And why was it denied?

3 A. The N. I. X. (ph.) branch notified the F. F. L. and
4 advised them that there was a prohibiter showing on the
5 criminal history of the person that was attempting to
6 purchase the firearm, so they denied the firearm sale.

7 MR. BETHEL: Your Honor, may we approach, a side
8 bar, please? I have an objection.

9 THE COURT: Why don't we just let the jury step out
10 for a minute.

11 Members of the jury, do not discuss the case.

12 However, before you step out I'm going to ask
13 you to put your names on your pads even if you've written
14 nothing, and turn your pads over in your chairs so that no
15 one can see even if you've written nothing.

16 If you'll step out for just a minute.

17 (Whereupon, the jury was escorted out of the
18 courtroom, and the following colloquy ensued):

19 THE COURT: Yes, Mr. Bethel?

20 MR. BETHEL: Your Honor, I object to this witness's
21 response to Mr. Brunson's question. Mr. Brunson asked was
22 the gun purchased, it was denied because, I expect the next
23 words out of Agent Panoke's mouth to be because Mr. Gunnings
24 was under indictment. That's not what he said. What he said
25 was, because of his criminal history. That sounds far more

1 damning and far more expansive than the mere fact it's
2 already been stipulated to here in this courtroom, and that
3 is that Mr. Gunnings was merely under indictment. In fact,
4 there has been no evidence that Mr. Gunnings has any criminal
5 history at all other than that case for which he was under
6 indictment of December two thousand six. I request that that
7 answer be stricken from the record as nonresponsive, and for
8 the jury to be instructed that there is no evidence of
9 criminal history for Pierre Gunnings, other than the fact
10 that he was under indictment in Georgia at the time the form
11 was filled out in December two thousand six.

12 THE COURT: Before we do that let me just get an
13 understanding. What was reason for which he was denied the
14 gun? Because of his criminal history, or because he was
15 under indictment?

16 THE WITNESS: Your Honor, the way how I interpret
17 "criminal history" is if anything shows up, whether it's an
18 arrest or indictment or conviction, that that starts his
19 history of criminal history. So he was denied for his
20 indictment.

21 THE COURT: For the indictment.

22 THE WITNESS: Yes, sir.

23 THE COURT: I'll instruct the jury that when he
24 said "criminal history," he merely meant his indictment and
25 nothing else. There is no evidence of anything else.

1 MR. BETHEL: Thank you, Your Honor.

2 THE COURT: Very good. Bring the jury back in.

3 MR. BETHEL: Your Honor, Mr. Gunnings needs a
4 comfort break.

5 THE COURT: A what?

6 MR. BETHEL: A comfort break.

7 THE COURT: I just never heard it called that
8 before.

9 MR. BETHEL: He needs to see a man about a horse.

10 THE COURT: All right. We'll take just a couple of
11 minutes while he has his break.

12 (Whereupon, a recess was taken.)

13 THE COURT: Proceed.

14 Now you want to clarify that last answer?

15 Q. Agent Panoke, I believe my last question to you had to do
16 with did he get the gun, you said no, and then I asked why
17 not, is that correct?

18 A. Yes, sir.

19 Q. What was your intended answer for that question?

20 A. That he was under indictment in the state of Georgia.

21 THE COURT: He had no other history. When you said
22 he had a criminal history, you didn't you just mean he was
23 indicted, or any criminal history.

24 THE WITNESS: That's right.

25 THE COURT: Any other criminal history.

1 THE WITNESS: That's right.

2 Q. Is that a fact, that he was under indictment that would
3 make him a prohibited person for purchasing a firearm?

4 A. That's correct.

5 Q. Is there any notice on that form forty-four seventy-three
6 that advises a person that there is a penalty for not making
7 an accurate statement or for making a false statement?

8 A. There is.

9 Q. And what is that?

10 A. In the section just above where the gun purchaser would
11 sign their name, there's a question or list of questions that
12 ask -- or informs the gun purchaser about falsifying
13 information. And one sentence in here reads, "I also
14 understand that making any false oral or written statement or
15 exhibiting any false or misrepresented identification with
16 respect to this transaction is a crime punishable as a
17 felony."

18 Q. After December sixteenth, two thousand and six did you
19 have any opportunity to talk to Mr. Gunnings?

20 A. I did briefly, yes.

21 Q. Tell the jury the nature and purpose of that
22 conversation.

23 A. Well, I obtained a cell phone number from the gun store,
24 or from Pawn Central. They explained that was a phone number
25 left by Gunnings if he was approved to purchase a firearm.

1 So I called him, explained to him who I was, explained to him
2 that I was conducting a federal investigation in reference to
3 him attempting to purchase a firearm while he was under
4 indictment from the state of Georgia, and he explained to me
5 that he didn't get the gun, as well as he didn't know he was
6 under indictment.

7 I told him, I said, "Before I ask you any questions
8 or before we go into any other information," I wanted to meet
9 with him in person to have a sit-down interview. And he told
10 me to contact his attorney to make arrangements --

11 MR. BRUNSON: Well stop --

12 MR. BETHEL: Your Honor, mistrial. I move for a
13 mistrial.

14 THE COURT: Just a minute. No, no, no. Not now.
15 I'll excuse the jury for just a minute.

16 (Whereupon, the jury was escorted out of the
17 courtroom, and the following colloquy ensued):

18 MOTION FOR MISTRIAL IN OPEN COURT

19 (THE JURY IS NOT PRESENT):

20 THE COURT: Now, yes? What were you going to say?

21 THE WITNESS: I apologize Your Honor. I realized
22 after I said it I shouldn't have mentioned in addition about
23 his attorney. I completely forgot.

24 THE COURT: What was your answer to the question?

25 THE WITNESS: My answer was that he instructed me

1 to contact his attorney to schedule the interview.

2 THE COURT: And then what happened?

3 THE WITNESS: That was the end of the conversation.

4 THE COURT: Yes?

5 MR. BRUNSON: Your Honor, it's Mr. Bethel's motion
6 for mistrial. I would ask him to state his grounds.

7 MR. BETHEL: This is exactly what we covered
8 earlier during the voir dire of this witness, Your Honor.
9 There was never any issue of that -- Everybody in this
10 courtroom, and I'm not sure how it had been forgotten
11 considering that was the point before the jury came in.
12 Everybody in this courtroom knew that he was specifically
13 told not to mention the fact that Mr. Gunnings invoked his
14 right to counsel. And he clearly stated that he told me to
15 contact his attorney when I was ready to jump out of my skin.
16 I'm amazed that we are at this point. We worked
17 very hard to seat a jury in this case, and I would at least
18 like a recess so I can decide whether I want to move for a
19 mistrial or whether I simply want to go forward with this
20 jury and have an instruction from the Court given to the
21 members of the jury.

22 THE COURT: I think you're entitled to have a
23 recess to make that decision. It's an important decision.

24 Is there anything you would like to say, Mr.
25 Brunson?

1 MR. BRUNSON: Yes, Your Honor. I did understand
2 the Court's admonition and the agreement, and I did not know,
3 and I want the record to reflect, that question was not
4 intended to go there. So I do think that this is a matter,
5 because of the brief nature and Mr. Bethel's quick response,
6 that can be cured by a jury instruction and this jury is not
7 tainted to require a mistrial.

8 THE COURT: Now my understanding is that he said he
9 wanted to talk to his attorney to schedule an appointment.

10 He told you he wanted to talk to his attorney to
11 schedule an appointment?

12 THE WITNESS: Yes, sir.

13 THE COURT: I'll have to decide whether that
14 warrants a mistrial. But I'll first give Mr. Bethel a few
15 minutes to make the decision as to whether he wants a
16 mistrial.

17 MR. BETHEL: Thank you, Your Honor.

18 (Whereupon, a recess was taken.)

19 DISCUSSION IN OPEN COURT

20 (THE JURY IS NOT PRESENT):

21 THE COURT: Mr. Bethel?

22 MR. BETHEL: Your Honor, after consulting with Mr.
23 Gunnings, we have decided not to move for a mistrial at this
24 time. Mr. Gunnings has already been locked up for several
25 months. It's his position that he's not guilty of this

1 offense, and he's looking to be released from custody at the
2 soonest possible moment.

3 THE COURT: How would you like to take this up?

4 MR. BETHEL: Well, Your Honor, there is no doubt
5 that this witness was instructed by the Court not to mention
6 that. It was the subject of a motion. I request number one,
7 that the jury be instructed to disregard any statement that
8 this witness made about Mr. Gunnings stating that he needed
9 to talk -- that this agent should talk to his lawyer.

10 Further, I think they should be instructed that
11 this witness knew he wasn't supposed to make that statement
12 before he made it in open court.

13 THE COURT: Now he actually said the statement was
14 he was to talk to his lawyer about setting up a conference.
15 You want the jury just to understand that he was to talk to
16 the lawyer, or do you want it also to be clear that your
17 client says he was not to talk to his lawyer about setting up
18 a conference?

19 MR. BETHEL: I'm not sure what distinction you're
20 making, Your Honor.

21 THE COURT: It's one thing to say, you know, you're
22 to talk to my lawyer, which is sort of saying I'm not going
23 to talk to you any more.

24 MR. BETHEL: Exactly.

25 THE COURT: It's another thing to say you can talk

1 to my lawyer about setting up a conference, which is merely
2 like talking to my secretary, talking to anyone, and then
3 we'll have a conference. Just get with my lawyer and we'll
4 set up a conference. One of them is clearly invoking a right
5 not to say anything further and to say from now on everything
6 has to go through my lawyer. This latter statement could
7 just merely be saying, you know, like if you want to talk to
8 me, talk to my lawyer about setting it up. It's not
9 necessarily saying I don't walk to you any more.

10 But I'll leave that up to you. Do you want any
11 clarification right now? I think all he got out was talk "to
12 my lawyer". He didn't get out set up the conference. I
13 don't know if you want the jury to hear the conference part,
14 or whether you just want them --

15 MR. BETHEL: Your Honor, what I would request is
16 that first Mr. Gunnings' actual statement was that he
17 suggested to the agent that he should talk to his lawyer to
18 set up a conference.

19 THE COURT: Right.

20 MR. BETHEL: Furthermore, I would like the jury
21 instructed that this was not to be discussed. That this
22 witness knew this issue was not to be discussed.

23 THE COURT: Right. So you would like the full
24 statement to come in, is all I'm saying.

25 MR. BETHEL: Yes, Your Honor.

1 THE COURT: I think the full statement has less
2 damage --

3 MR. BETHEL: I understand, Your Honor.

4 THE COURT: I'll do that.

5 Bring in the jury.

6 (Whereupon, the jury was escorted into the
7 courtroom.)

8 THE COURT: Members of the jury, you just heard
9 this witness state in response to a question that the
10 defendant said "talk to my lawyer". The full statement was
11 talk to my lawyer so that a conference can be set up.
12 Nonetheless, that statement of this witness was improper.
13 Prior to these proceedings I told this witness never to
14 mention that statement. He was cautioned not to do so and
15 yet he did. He violated the Court order, the witness did,
16 and you are not to consider that answer at any time during
17 your deliberations.

18 Go ahead, Mr. Brunson.

19 MR. BRUNSON: Thank you, Your Honor.

20 THE COURT: So disregard that last answer, is the
21 bottom line.

22 Q. Agent Panoke, very carefully, where did you get the
23 number that you called for Mr. Gunnings?

24 A. First of all, I apologize to the jury for their
25 inconvenience.

1 I received a phone number from employees at Pawn
2 Central in Opelika, Alabama.

3 Q. Where did they have a phone number?

4 A. They instructed me that they received that phone number
5 from Gunnings.

6 Q. Who did you reach when you called that number?

7 A. An individual who identified himself as Gunnings.

8 Q. What did you say to him when you got him on the phone?

9 A. I explained to him -- or I introduced myself, explained
10 to him that I was an agent with A. T. F., I was conducting a
11 federal investigation concerning his attempted purchase of a
12 firearm, and that I wanted to conduct a sit-down interview
13 with him.

14 Q. Did he say anything to you at all about his attempted
15 purchase of the firearm?

16 A. Did he make any statements to me? Is that what you're
17 asking?

18 MR. BETHEL: Your Honor, I object for the mere fact
19 that these questions have already been asked and answered.
20 We're plowing the same ground that we've already plowed.
21 It's cumulative.

22 THE COURT: I'll let him state it again.
23 Overruled.

24 Go ahead.

25 Q. Let me ask you this. How long did this conversation

1 last?

2 A. Approximately two to three minutes at the most. Not long
3 at all.

4 Q. A short conversation?

5 A. Very short, yes.

6 Q. What did Mr. Gunnings say to you in reference to his
7 attempted purchase of that firearm?

8 A. He told me that he did not get the gun, and that he did
9 not know he was under indictment.

10 Q. Is that it?

11 A. That was it.

12 Q. Did he say anything to you about not having filled out
13 the form?

14 A. He did not.

15 Q. Did he say anything to you at all about not being able to
16 read what was on the form?

17 A. He did not.

18 MR. BRUNSON: No further questions.

19 CROSS EXAMINATION

20 BY MR. BETHEL OF WIL PANOKE:

21 Q. Good afternoon, Agent Panoke.

22 A. Good afternoon, sir.

23 Q. At the time you called Mr. Gunnings, it was your
24 impression he was driving at the time.

25 A. That's what it sounded like to me.

1 Q. And it was also your impression that he was preoccupied
2 with what he was doing while he was on the phone with you?

3 A. Possibly.

4 Q. Well you had testified earlier in this courtroom when the
5 jury wasn't present and that was your word, was it not?

6 A. Yes.

7 Q. And the word you used was, you thought he was
8 preoccupied.

9 A. In my opinion it appeared he was preoccupied.

10 Q. So it's more than possible that he appeared to be
11 preoccupied?

12 A. I don't know for sure, but that's my interpretation,
13 yes.

14 Q. Now, do you still have the form that you were looking
15 at?

16 A. Yes, sir, I have both forms.

17 Q. You were not present when someone, Mr. Gunnings, filled
18 out that form.

19 A. That's correct.

20 Q. You were not there to see or hear any conversation
21 between Mr. Gunnings and the pawnshop employee who helped him
22 fill out this form.

23 A. That's correct.

24 Q. So you have no personal knowledge whatsoever about how
25 this form became filled out.

1 A. No firsthand knowledge, no, sir.

2 Q. So no personal knowledge. You weren't there?

3 A. That's correct.

4 Q. If you look at block three on that form where it says
5 "place of birth" under "foreign country," it says "Lee".

6 A. Yes, sir.

7 Q. Are you aware of another country on the planet called
8 "Lee"?

9 A. No, sir.

10 Q. But it was filled out in Lee County.

11 A. Correct.

12 Q. Now down at the bottom of the form at block thirteen --

13 A. I'm sorry, what number?

14 Q. Thirteen.

15 Do you see there where it says "What is your state
16 of residence if any," and then that must be handwritten in.

17 A. I do.

18 Q. Do you still where it was -- the first word that was
19 written was Albama, A-l-b-a-m-a?

20 A. Yes.

21 Q. And that was crossed out?

22 A. Correct.

23 Q. And then Alabama was written in.

24 A. Yes, sir.

25 Q. Now you said that whoever is applying to buy the gun is

1 supposed to fill out this page, correct?

2 A. That's correct.

3 Q. In fact, the employee at the federal firearms licensee,
4 in this case the pawnshop, is not supposed to give them
5 information as to filling out this form.

6 A. That is correct.

7 Q. In fact, if in fact that's what happened, that that
8 pawnshop employee simply told someone how to fill out the
9 form, that is what question went in each box, that federal
10 firearms licensee employee would be in big trouble.

11 A. They would be in violation, yes.

12 Q. They would be in violation of the law. So if that
13 employee were to come into this courtroom and admit under
14 oath that that's in fact what he had done, he would be in
15 violation of federal law himself.

16 A. Yes, sir, that's correct.

17 MR. BETHEL: No further questions, Your Honor.

18 MR. BRUNSON: May this witness be excused?

19 THE COURT: Yes. You may step down.

20 (Whereupon the witness, Will Panoke, stepped down
21 from the stand.)

22 MR. BRUNSON: We'd call Bonnie.

23 B O N N I E D E R R E R,

24 the witness herein, having first been duly sworn or
25 affirmed to tell the truth, was examined and testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. BRUNSON OF BONNIE DERRER:

4 Q. State your name and how you're employed, please.

5 A. My name is Bonnie Derrer. I'm the Assistant District
6 Attorney in Cobb County, Georgia.

7 Q. And you have previously been sworn and are under oath, is
8 that correct?

9 A. Yes, sir.

10 Q. Do you know Pierre Gunnings?

11 A. By having him as a defendant in the courtroom I was
12 working, yes.

13 Q. Do you recognize him in court?

14 A. Yes, he's in court.

15 Q. Very briefly, I want to ask you if prior to December the
16 sixteenth, two thousand six if Mr. Gunnings was indicted in
17 Georgia.

18 A. Yes, sir, that's correct. He was --

19 Q. That's all right. Just he was indicted?

20 A. Yes.

21 Q. When was that?

22 A. That was on September twenty-first, two thousand six.

23 Q. Had -- Prior to December the sixteenth, two thousand six,
24 had he made a court appearance?

25 A. Yes. In fact, he made two court appearances. He was in

1 court on November sixth of two thousand six, and that was the
2 first jury trial calendar call. The defendant was present in
3 the courtroom. He was wearing a military uniform, and the
4 judge that I was working for at the time, Judge Dorothy
5 Robinson, does require defendants to be present at all court
6 dates.

7 And then the second time he was called back to
8 report back. The report back date was on December fourth, of
9 two thousand six. And that was for a pretrial. So it was an
10 attempt for the state to tell the defendant and the defense
11 attorney what its offer would be for a plea. And he was
12 present on that date.

13 Q. Okay. I'm going to try to ask this for a yes or no
14 answer. Was his court appearance in connection with having
15 been indicted for a felony?

16 A. Yes.

17 MR. BRUNSON: No further questions, Your Honor.

18 CROSS EXAMINATION

19 BY MR. BETHEL OF BONNIE DERRER:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. You were not present at the Central Pawnshop in Auburn,
23 Alabama on the sixteenth of December of two thousand six?

24 A. I was not.

25 Q. So you were not there when Pierre Gunnings filled out a

1 form forty-four seventy-three in an attempt to purchase a
2 gun?

3 A. No.

4 Q. So you have no idea about what the circumstances were
5 surrounding Mr. Gunnings filling out that form?

6 A. Right.

7 Q. Because weren't there?

8 A. Right.

9 Q. So you also don't have any knowledge as to whether or not
10 Mr. Gunnings can read?

11 A. Well, I know that he can read and write because he filled
12 out several forms and I have copies of those with his
13 signature and his address that he wrote.

14 Q. So he filled out some personal information, name?
15 Address?

16 A. Yes. I have a change of address form that he filled out
17 on May twenty-third, two thousand six in Cobb County, and he
18 signed that form. He wrote his address and telephone number.
19 I also have --

20 Q. But you've never seen him read. He's never read out loud
21 to you?

22 A. Has he ever read out loud to me?

23 Q. Right.

24 A. No.

25 Q. Now, you say he was wearing a military uniform?

1 A. That's correct.

2 Q. Army uniform?

3 A. I don't know all the different branches. I assume it was
4 army.

5 Q. Was it green?

6 A. I think so, yes.

7 MR. BETHEL: No further questions, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BRUNSON OF BONNIE DERRER:

10 Q. Ms. Derrer, the forms you have referred to, did he fill
11 them out accurately?

12 A. Yes. The address that he wrote on that form was the same
13 address that the clerk mailed a notice of his court dates
14 that I talked about previously, and that notice included a
15 description of the charges against him.

16 Q. Did he have any questions about information on those
17 forms that he filled out?

18 A. I don't know whether he had any questions about them, but
19 he did put the correct information in the form. The form
20 asked for a name, he put his name. The form asked for an
21 address and he listed his address. The city is there, state,
22 zip code, telephone number. He listed his telephone number.
23 Then it says "Person requested by," and he signed his name.
24 It asked for a date, and he put the date out there.

25 MR. BRUNSON: No further questions.

1 RECROSS EXAMINATION

2 BY MR. BETHEL OF BONNIE DERRER:

3 Q. You were not standing there when he filled out these
4 forms.

5 A. No, I wasn't.

6 Q. So when you say that he put that information down there,
7 that simply is what -- you're simply going by what's on the
8 form.

9 A. That's correct.

10 Q. So the question is this, then: You had no idea when he
11 filled out those forms whether someone was standing there and
12 pointing out to him what information was that he needed to
13 put on the form?14 A. He was obviously literal, or he couldn't have filled them
15 out.

16 Q. Well, you weren't there when he filled out the forms.

17 A. Correct.

18 Q. So it don't know whether or not he read it and filled it
19 out, or someone was there and explained it to him and filled
20 out the information.

21 A. I just know that he can write.

22 Q. Well, what you know is he put those letters on that page,
23 correct? You don't know if he read and filled it out, or if
24 someone explained it to him and he filled out the
25 information. That's what happened, because you weren't there

1 when he filled it out, right?

2 A. Right.

3 MR. BETHEL: No further questions, Your Honor.

4 MR. BRUNSON: Your Honor, may this witness be
5 excused?

6 THE COURT: Yes. Thank you.

7 (Whereupon the witness, Bonnie Derrer, stepped down from
8 the stand.

9 THE COURT: Yes.

10 Next witness.

11 MR. BRUNSON: Doug Johnson.

12 D O U G J O H N S O N,

13 the witness herein, having first been duly sworn or
14 affirmed to tell the truth, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. BRUNSON OF DOUG JOHNSON:

18 Q. State your name and how you're employed, please.

19 A. My name is Doug Johnson. I'm the manager at Pawn Central
20 here in Opelika.

21 Q. Were you acting in that capacity in December of two
22 thousand six?

23 A. Yes, sir.

24 Q. Is Pawn Central licensed to sell firearms?

25 A. Yes, sir.

1 Q. What does that exactly mean?

2 A. It means that the business is federally licensed through
3 the A. T. F. to carry an N. F. L. license to buy and sell
4 ammunition.

5 Q. What is required to become an F. F. L. licensee?

6 A. It's A long application process and so forth This is a
7 form that has to be filled out in order to start the
8 purchasing of a firearm.

9 Q. Are you required to keep records?

10 A. Yes, sir.

11 Q. Let me ask you what's been introduced conditionally as
12 Government's exhibit one and one A, and can you identify
13 these?

14 MR. BRUNSON: And may I approach, Your Honor?

15 THE COURT: Yes.

16 A. Yes, sir. The Government exhibit one appears to be a
17 forty-four seventy-three form that the purchaser of the gun
18 fills out in order to get through the background check to
19 purchase the gun.

20 Q. On that application who was the purchaser?

21 A. The purchaser was Pierre Marcello Gunnings.

22 Q. Is that a record that was kept at your office?

23 A. Yes, sir.

24 Q. At your store?

25 A. Yes, sir.

1 Q. Do you recall when that was filled out?

2 A. I know it was around December of oh six just in staying
3 current with the case, but I couldn't tell you the exact date
4 without looking. It appears it was called in on December
5 sixteenth.

6 Q. Did Mr. Gunnings in fact purchase a firearm with that
7 application?

8 A. No, sir. There was no transfer of the gun because the N.
9 I. C. S. office called back on twelve nineteen with a denial.

10 Q. Did Mr. Gunnings purchase anything?

11 A. I believe the day he was in and initially filled out this
12 forty-four seventy-three, I believe on that day he purchased
13 a magazine for a handgun that. I had given Mr. Panoke a copy
14 of the receipt on the purchase for the magazine.

15 Q. What did he -- What type of gun was he attempting to
16 purchase with that application?

17 A. Well, I'm not exactly sure here because we did not list
18 the gun on this application because it was not transferred.
19 The guy that worked under my management was the one that
20 handled the transaction. I know the magazine he purchased
21 went to the Beretta twenty-two caliber pistol, but I'm not
22 sure if that was the one he was attempting to purchase with
23 this.

24 Q. Does that form within its contents show descriptions of
25 guns that are being purchased or attempted to be purchased?

1 A. The actual transfer from the F. F. L. dealer to the
2 individual takes place. When the individual receives the gun
3 from the dealer, then we fill out the form with manufacturer
4 number, model number, serial number, type of gun and caliber.
5 Yes, sir.

6 Q. Okay. Without knowing because the sale was not completed
7 and that isn't filled out, is there another place on there
8 that says what category of gun is being purchased?

9 A. Yes, sir. It appears here that he had applied for the
10 purchase of a handgun.

11 Q. But that's all you know, just a handgun?

12 A. Just a handgun. That's all I can tell you.

13 Q. But you also know he did purchase a Beretta clip?

14 A. Yes, sir.

15 Q. And that's for a twenty-two caliber pistol, you said?

16 A. Yes, sir.

17 Q. Did you actually assist Mr. Gunnings with his
18 transaction?

19 A. I don't believe I had anything to do with it. It's been
20 two years. I may have, you know, stepped away and handed him
21 to one of the other employees. It's been a long time but I
22 don't recall. I don't think I did.

23 MR. BRUNSON: Your Honor, at this time I'm
24 attempting to tie up the introduction of these two exhibits,
25 and I move that one and one A be admitted unconditionally.

1 THE COURT: Admitted.

2 Q. Do you know who actually took part in that application?

3 A. Steve Wingo is a guy that was working in my employ at
4 that time, and he was the one that did the actual call-in for
5 this particular transaction.

6 Q. If you would, please, walk the jury through making an
7 application. How many pages are included in that form?

8 A. The customer fills out the complete front side, answers
9 the questions that are applicable, and then before we
10 actually transform this paper to the customer for him to fill
11 out the information, we take his I D, write in the I D type,
12 the I D number, the expiration date on that I D and what type
13 of gun is attempted to be purchased. And then we'll turn it
14 over to the customer to fill out his portion, and then we'll
15 take it back, make sure everything is complete then do the
16 call-in to the N. I. C. S. program officer.

17 Q. Do you ever assist the customer to in filling out the
18 front of that card?

19 A. No, sir, we do not do any of the writing on the portion
20 for where the customer is supposed to, because that would
21 kind of be a conflict of interest with us being on the dealer
22 side. When on the purchaser side, that has to be filled out
23 by himself. Occasionally, a customer who can't read or write
24 will normally bring a member of his family or a
25 representative, an acquaintance or friend to fill out that

1 portion of it for them because we can't fill it out.

2 Q. So as you suggested, that is permissible, it's just the
3 licensee can't fill it out.

4 A. Right.

5 Q. But they can request and obtain assistance?

6 A. That is correct.

7 Q. Do you know whether or not Mr. Gunnings requested any
8 assistance?

9 A. Not to my knowledge, no, sir.

10 Q. Is the form filled out completely?

11 A. Yes, sir, it appears to have everything on here that's
12 supposed to be down to the point where we did not transfer
13 because we couldn't proceed any further at that time. We
14 filled it out as far as we could until it was denied.

15 MR. BRUNSON: No further questions, Your Honor.

16 CROSS EXAMINATION

17 BY MR. BETHEL OF DOUG JOHNSON:

18 Q. Mr. Johnson, let's be clear. You don't know Mr.
19 Gunnings.

20 A. I do not.

21 Q. You do not remember him?

22 A. No, sir.

23 Q. You don't remember helping him?

24 A. I do not.

25 Q. You couldn't identify him if you had to. In other words,

1 before today you couldn't have picked him out of a lineup.

2 A. I could tell you that I probably could not have picked
3 him out because so many customers come through on any given
4 day.

5 Q. And this happened a couple of years ago?

6 A. Yes, sir.

7 Q. So you weren't there. At least you have no recollection
8 of how this form got filled occupant?

9 A. That's correct.

10 Q. So you weren't there when I believe it's Mr. Wingo, an
11 employee of yours, was the person who actually helped Mr.
12 Gunnings that day.

13 A. I probably was there but I may not have been standing
14 right with the two of them during this transaction. I spend
15 a lot of time -- Chances are I was at the business but not
16 involved in this.

17 Q. That's my point. You were not involved in this form
18 being filled out in any way?

19 A. That's right.

20 Q. So you certainly have no recollection of being present at
21 the time that Mr. Wingo and Mr. Gunnings were filling out
22 this form?

23 A. No, sir.

24 Q. Now you said it's a policy. You don't fill it out for
25 the customers and you don't answer any questions.

1 A. We'll answer a question if they need clarification. If a
2 customer is unable to read but can do all the writing,
3 occasionally I'll read off the questions and let ask them
4 answer in the appropriate block. We cannot write into any of
5 the customer fields.

6 Q. Take look at that form, block thirteen.

7 A. Yes, sir.

8 Q. You can see that somebody had misspelled Alabama and had
9 written A-L-B-A-M-A, is what it looks like.

10 A. Yes, sir.

11 Q. So obviously whoever was helping him at your store, Mr.
12 Wingo was apparently helping him, he must have looked at that
13 and explained to Mr. Gunnings that he misspelled it and made
14 him cross it out and spell it again?

15 A. I don't know.

16 Q. Well obviously somebody had to tell Mr. Gunnings he
17 misspelled Alabama.

18 MR. BRUNSON: Object, Your Honor. He could have
19 noticed it himself.

20 THE COURT: Actually, you're both just
21 speculating.

22 Q. Again, you didn't participate in filling this form out in
23 any way?

24 A. As far as I know I was not involved in this particular
25 transaction.

1 MR. BETHEL: No further questions, Your Honor.

2 MR. BRUNSON: Your Honor, may this witness be
3 excused?

4 THE COURT: Yes.

5 (Whereupon the witness, Doug Johnson, stepped down
6 from the stand.)

7 THE COURT: Next witness.

8 MR. BRUNSON: Steve Wingo.

9 S T E V E W I N G O,

10 the witness herein, having first been duly sworn or
11 affirmed to tell the truth, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. BRUNSON OF STEVE WINGO:

15 Q. Would you state your full name and how you're employed.

16 A. Joseph Steven Wingo. Pawn City.

17 Q. Let me ask you to keep your voice up so the last juror in
18 the box can hear you very clearly.

19 A. Steven Wingo, Pawn City.

20 Q. Mr. Wingo, have you previously been sworn and recognize
21 that you are under oath?

22 A. Yes.

23 Q. Where do you work?

24 A. Pawn City in Lanett.

25 Q. Where did you work in December? Specifically, December

1 the sixteenth of two thousand six?

2 A. Pawn Central in Opelika.

3 Q. Do you know Doug Johnson?

4 A. Yes, sir.

5 Q. How do you know him?

6 A. He's my manager -- or was my manager.

7 Q. When was he your manager?

8 A. Oh six to -- for about a year. About eleven months.

9 MR. BRUNSON: May I approach, Your Honor?

10 THE COURT: Yes.

11 Q. Let me ask you to look at what's been introduced as
12 Government's exhibit one and one A. Can you identify those,
13 please.

14 A. Forty-four seventy-threes.

15 Q. What are forty-four seventy-threes?

16 A. They are -- To get a gun, you have to -- it's a federal
17 -- to purchase a gun it's a background check.

18 Q. And with that form, who was attempting to purchase a
19 firearm?

20 A. Gunnings, Pierre.

21 Q. And when was that being done?

22 A. I guess twelve sixteen oh six.

23 Q. Did you assist Mr. Gunnings?

24 A. What do you mean by "assist"?

25 Q. Well, were you the person in the store who was waiting on

1 him when he completed this form out?

2 A. Yes, sir.

3 Q. Do you remember that?

4 A. No, sir.

5 Q. Do you remember Mr. Gunnings?

6 A. No, sir.

7 Q. How do you know that you were the one that was assisting
8 him when he attempted to purchase that firearm?

9 A. My handwriting.

10 Q. What part of the form is your handwriting on?

11 A. It's on the back. I took the driver's license number
12 down and wrote it down. I had to have a picture I D, state
13 I D.

14 Q. Is that something you're required to do with every form
15 forty-four seventy-three?

16 A. Yes, sir.

17 Q. Did you do that in this case?

18 A. Yes, sir.

19 Q. Did a person give you a driver's license?

20 A. Yes.

21 Q. And whose driver's license was that?

22 A. It had to be Pierre Gunnings.

23 Q. Did you look at the driver's license -- Was it a picture
24 I D?

25 A. Yes, it has to be.

1 Q. Did you look at that and see if that was the person who
2 was standing before you filling out the form?

3 A. Yes, sir.

4 Q. What information is included on the portion that you
5 filled out?

6 A. Trying to buy a handgun and then whether or not --

7 Q. It says "handgun"?

8 A. Right.

9 Q. Okay.

10 A. And then I put "Alabama" and a "D" for driver's license,
11 and his driver's license number and expiration date and the
12 date that he tried to purchase the gun.

13 Q. Okay. And, again, what was the date he was trying to
14 purchase?

15 A. Twelve sixteen oh six.

16 Q. And did you copy from the document handed to you, that is
17 the driver's license, the number that is included in that
18 form?

19 A. From this driver's license?

20 Q. Yes, sir.

21 A. Yes.

22 Q. What else did you put on that form?

23 A. I called it in, and I got the N. I. C. S. number and it
24 was delayed. It was delayed until Thursday the
25 twenty-first.

1 Q. What does that mean?

2 A. We couldn't -- We cannot give the gun to the person
3 trying to buy until we get an answer from the F. B. I.

4 Q. Is that a system that you are required to work under
5 being employed by the federal firearms licensee?

6 A. Yes.

7 Q. Look at the front page. What, if anything, did you write
8 on that front page?

9 A. Nothing.

10 Q. Are you allowed to write anything on that front page?

11 A. No, sir.

12 Q. Nothing at all?

13 A. No, sir.

14 Q. Who is required to fill out the form on the front page?

15 A. The person trying to buy the firearm.

16 Q. Is that done in every occasion in a situation where
17 you're selling, or a person is attempting to buy a firearm?

18 A. Yes. If they don't have a state I D or driver's license,
19 I can't sell them a gun.

20 Q. And you didn't write down any of the answers on that
21 form?

22 A. No, sir.

23 Q. If a person tells you that they don't understand or they
24 can't read the form, what can you do then?

25 A. If they have any questions, you know, I can try to

1 explain to it them, but I cannot answer or I cannot provide a
2 yes or no answer or write anything on that form.

3 Q. Is there a yes on that form?

4 A. The first question.

5 Q. And what is that question?

6 A. "Are you the actual buyer of the firearm?"

7 Q. And that is answered how?

8 A. "Yes."

9 Q. How many other questions are there to be answered?

10 A. There were a total of fourteen.

11 Q. Is every one answered?

12 A. Yes, except the last one. That says, "If you are not a
13 citizen".

14 Q. And that didn't apply in this case, did it?

15 A. No, sir.

16 Q. So every other question was answered?

17 A. Yes, sir.

18 Q. What about not being a citizen was appropriately not
19 answered?

20 A. Right.

21 Q. How were they all answered?

22 A. The first question was actually "yes," and two through
23 eleven were "no," and then twelve was N. A. So it doesn't
24 have anything in it.

25 Q. Let me ask you to look at eleven B. Read that question,

1 please. Read it out loud for the jury.

2 A. Eleven -- "Are you a non-immigrant alien?"

3 Q. No, eleven B.

4 A. Oh, eleven B. I'm sorry.

5 "Are you under any indictment or information in any
6 court for a felony or any other crime for which the judge
7 could imprison you for more than one year?"

8 Q. And how is that answered?

9 A. It's answered, "No."

10 Q. Again, I'm going to ask you. Did you complete any part
11 of this front page?

12 A. No, sir.

13 MR. BRUNSON: May I approach, Your Honor?

14 THE COURT: Yes.

15 Q. I want to direct your attention to question number
16 thirteen. And what is written there at the beginning?

17 A. It looks like he tried to spell Alabama.

18 Q. And did you mark through that?

19 A. No, sir.

20 Q. Did you suggest that it should be marked through?

21 A. It's spelled correctly.

22 Q. Did you?

23 A. Yes, sir.

24 Q. Okay. And is it spelled correctly?

25 A. It is on the second part.

1 Q. And is number twelve, was an answer given there?

2 A. The answer, "No," and then it really doesn't have
3 anything to do with it so it's an N. A. question. But that's
4 his initials right there by it.

5 Q. What is the initials?

6 A. "P. G."

7 Q. And he did that?

8 A. Yes, sir.

9 Q. What was your purpose in getting this front page
10 completed?

11 A. So we could do the background check.

12 Q. Did he ever say anything to you that led you to believe
13 that he was having difficulty reading or understanding what
14 was on that form?

15 A. I really don't remember that.

16 Q. Well, if he had asked you for assistance, what would you
17 have done?

18 A. I can't answer the question for him. I can try to
19 explain the question for him, but I can't answer for him.

20 Q. Is there anything that makes this stick out, makes it you
21 remember this that he didn't understand the form?

22 A. No, sir.

23 Q. Did he furnish any contact information?

24 A. I don't remember.

25 Q. How would he have been notified to come pick up his

1 firearm?

2 A. We would have taken his cell number and put a sticky note
3 on the front of it.

4 Q. But that's not on that form?

5 A. No.

6 MR. BRUNSON: No further questions.

7 CROSS EXAMINATION

8 BY MR. BETHEL OF STEVE WINGO:

9 Q. Mr. Wingo, that form was filled out, it appears it was
10 filled out on the sixteenth day of December of two thousand
11 six.

12 A. Yes, sir.

13 Q. Now you were working at Central Pawnshop in December of
14 two thousand six.

15 A. Correct.

16 Q. You were still working there three months later on the
17 sixteenth of March, two thousand six?

18 A. Yes, sir.

19 Q. You see quite a few customers at the pawnshop?

20 A. Yes, sir.

21 Q. So you would have seen a lot of customers in three months
22 between the sixteenth of December and the sixteenth of March
23 two thousand seven?

24 A. Right.

25 Q. And you already said you don't really have any specific

1 recollection of Pierre Gunnings.

2 A. No, sir.

3 Q. You really can't say exactly what happened while you were
4 there, while he was there, and what didn't happen.

5 A. Right.

6 Q. Now the first time anybody asked you about what happened
7 that day was when Special Agent Panoke talked to you.

8 A. Right.

9 Q. And that was on the sixteenth of March of two thousand
10 and seven.

11 A. Okay.

12 Q. Well if Agent Panoke's notes were to reflect that he
13 talked to you on the sixteenth of March, two thousand seven,
14 you wouldn't have any reason to dispute that?

15 A. I mean -- I don't remember what day or anything like
16 that. I remember meeting with him.

17 Q. But it was several months. You recall it was several
18 months later?

19 A. Yes, sir.

20 Q. And didn't you in fact tell him at the time he talked to
21 you that you didn't really recall Pierre Gunnings?

22 A. Correct.

23 Q. So you can't specifically remember if you had told him to
24 correct that misspelled Alabama.

25 A. Correct.

1 Q. You can see that's down here at the bottom of the form
2 where obviously somebody had misspelled Alabama, and that was
3 crossed out and then the correct spelling was written in.

4 A. Right.

5 Q. But it's likely you looked at the form and you told him
6 that needed to be spelled correctly?

7 A. Right.

8 Q. And you also talked about that last block. You said that
9 wasn't filled out. And in fact what had happened was, he had
10 written "No" in that block.

11 A. Right.

12 Q. Even though you're only supposed to write something in
13 that block --

14 A. N. A. -- If he didn't answer it yes to eleven, then --

15 Q. Well if we look at question twelve it says specifically
16 "If you answered yes to eleven point L, do you fall within
17 any of the exceptions set forth in notice for, exception to,
18 for example, a valid state hunting license? If yes, the
19 licensee must complete question twenty-six."

20 So someone who is reading that, clearly that tells
21 them that they only filled this block in if they answered yes
22 to this question.

23 A. Right.

24 Q. But when Mr. Gunnings filled out the form he answered,
25 "No." Now that "No" is crossed through and "N. A." is

1 written in next to it, and then his initials are written next
2 to that. Now he wouldn't have known to do that on his own,
3 would he?

4 A. If they answer no, we just ask if they would or
5 whatever.

6 Q. So you must have told him to cross that out, write in the
7 N. A. and put his initial there.

8 A. Right.

9 Q. Because he wouldn't have any idea that he was supposed to
10 do that unless you told him.

11 A. Right.

12 Q. So just to be clear, you don't have any specific memory
13 of Pierre Gunnings?

14 A. No, sir.

15 Q. You don't have any specific memory of what the
16 conversation was that transpired in the store that day?

17 A. Correct.

18 Q. And it was three months later before you talked to
19 anybody about that particular transaction?

20 A. Correct.

21 MR. BETHEL: No further questions, Your Honor.

22 MR. BRUNSON: Your Honor, may this witness be
23 excused?

24 THE COURT: Yes.

25 (Whereupon the witness, Steve Wingo, stepped down

1 from the stand.)

2 MR. BRUNSON: Your Honor, is now the appropriate
3 time for the afternoon recess?

4 THE COURT: How many more witnesses do you have?

5 MR. BRUNSON: At this point, Your Honor, I have
6 one.

7 THE COURT: One more witness?

8 MR. BRUNSON: Yes, Your Honor.

9 THE COURT: How long will this witness take?

10 MR. BRUNSON: Your Honor, the witness would not be
11 a long witness, but I'm not prepared to go forward right now.

12 THE COURT: You should have told me. Why isn't
13 your witness ready?

14 MR. BRUNSON: May I approach?

15 (Whereupon, an off-the-record bench conference was
16 held between both counsel and the Court.)

17 THE COURT: I'll excuse the jury. We have to take
18 something up outside the presence of the jury. This will be
19 at least a ten minute recess.

20 (Whereupon, the jury was escorted out of the
21 courtroom and the following colloquy ensued):

22 THE COURT: The question now is whether the four oh
23 four B evidence comes in?

24 MR. BRUNSON: Yes, Your Honor.

25 THE COURT: I'll hear you.

1 MR. BRUNSON: Your Honor, the last witness would be
2 Auburn Police Officer Michael Roberson. He has been here.
3 He has been sworn. The case has moved more quickly than I
4 thought, but he told me he could be here within a matter of
5 minutes after a phone call.

6 The purported evidence would be that on March the
7 first of this year, he, acting as an Auburn police officer,
8 arrested Mr. Gunnings for possession of a firearm. And this
9 was obviously after he had been indicted in this Court on
10 this charge, then apprised of the nature and been informed
11 that he could not have a firearm. And it goes strictly to
12 his intent to possess a firearm knowing he was not able to
13 have a firearm.

14 THE COURT: Is that intent at issue in this case?

15 MR. BRUNSON: Your Honor, I submit that it is
16 because he's saying that he didn't know what he was doing,
17 that he couldn't read the form. That certainly shows that he
18 did --

19 THE COURT: He says he couldn't read the form.
20 Arguably his defense is that he didn't understand what was on
21 the form. But I don't think, at least so far, that there is
22 any question that he was intending to purchase a firearm.

23 MR. BRUNSON: Well he was intending to purchase a
24 firearm unlawfully, which is a requirement. That's the
25 reason for the forty-four seventy-three. And he possessed a

1 firearm unlawfully after he knew he was under indictment in
2 the Middle District of Alabama.

3 THE COURT: The charge here is not intending to
4 possess a firearm unlawfully, the charge here is giving false
5 information to get a firearm. It's not quite that broad.
6 The four oh four B evidence doesn't come in yet. I have yet
7 to hear, however, what his defense will be, so it may come in
8 as rebuttal.

9 MR. BRUNSON: At this time, Your Honor, the
10 Government rests.

11 THE COURT: Very good. When he puts on his
12 defense, your four oh four B evidence may become relevant.
13 So far, no.

14 MR. BRUNSON: May my agent be excused to tell the
15 witness not to come at this time?

16 THE COURT: Yes.

17 THE COURT: Are you ready to proceed with your
18 case?

19 MR. BETHEL: We would move for a judgment of
20 acquittal at this time.

21 THE COURT: The motion for judgment of acquittal is
22 denied.

23 Now how many witnesses do you have?

24 MR. BETHEL: We anticipate nine witnesses, Your
25 Honor.

1 THE COURT: Will you be calling the defendant at
2 this time?

3 MR. BETHEL: Your Honor, we haven't yet decided at
4 this time.

5 THE COURT: Let me know, because I do need to put
6 it on the record with regard to whether he testifies.
7 Especially if he doesn't testify, I will need to inform him
8 of his rights.

9 MR. BETHEL: Your Honor, I will say at this time
10 that we do not expect Mr. Gunnings to testify. That could
11 change, but at the present we do not expect Mr. Gunnings to
12 testify.

13 THE COURT: Why don't we go ahead then and make the
14 inquiry.

15 Mr. Gunnings, if you would stand.

16 Mr. Gunnings, you understand that you have a right
17 to testify?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And however you can make that decision
20 as to whether you want to testify after conferring with your
21 lawyer.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: But the decision as to whether you
24 should testify is your decision, do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: And I understand at this time you do
2 not wish to testify, is that correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Has anyone forced you or coerced you or
5 said anything to you that would make you give up your right
6 to testify?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you have any questions for me or
9 from your lawyer with regard to whether you should testify?

10 THE DEFENDANT: No.

11 THE COURT: So are you voluntarily giving up your
12 right to testify?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you have any questions for him, Mr.
15 Bethel?

16 MR. BETHEL: No, Your Honor.

17 THE COURT: Do you have anything, Mr. Brunson, on
18 this issue?

19 MR. BRUNSON: No, Your Honor.

20 THE COURT: We'll take a ten minute recess and
21 we'll come back with the defendant's case.

22 (Whereupon, a recess was taken.)

23 THE COURT: Members of the jury, the Government has
24 rested, and we are now in the defendant's case.

25 Mr. Bethel?

1 MR. BETHEL: Your Honor, the defense witnesses have
2 not yet been sworn. Would you like us to --

3 THE COURT: Yes. Bring them all in and we'll swear
4 them all in at one time.

5 (Whereupon, all prospective defense witnesses were
6 duly sworn by the courtroom deputy clerk.)

7 S C O T T F O W L E R,
8 the witness herein, having first been duly sworn or
9 affirmed to tell the truth, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. BETHEL OF SCOTT FOWLER:

13 MR. BETHEL: Your Honor, I'd like to move for the
14 admission of defendant's exhibit one into evidence.

15 THE COURT: Admitted.

16 Q. Good afternoon, Mr. Fowler.

17 A. Good afternoon.

18 Q. Sir, do you know Pierre Gunnings?

19 A. I do.

20 Q. If he's in the courtroom, could you point to him and
21 describe where he's sitting, please.

22 A. Right here next to the lady, your helper.

23 Q. And you'll have to speak into the microphone. The court
24 reporter needs to record everything that you say.

25 A. Seated right here with the striped tie.

1 Q. Sir, in what city and state do you live?

2 A. Auburn, Alabama.

3 Q. How long have you been a resident of Auburn, Alabama?

4 A. Twenty-five years.

5 Q. Sir, what do you do for a living?

6 A. I'm a building contractor.

7 Q. Please describe for the Court your educational
8 background.

9 A. I have a Bachelor's degree from Auburn University with a
10 major in technology, and a minor in building science. I have
11 a Master's degree the in Special Education.

12 Q. What kind of training did you receive as part of your
13 Master's degree in Special Education?

14 A. I worked with children of all ages. All different
15 disabilities. Grades K through twelve. Training in behavior
16 management. Teaching children with reading disabilities.
17 Behavioral problems. Autism. How to do psychometric testing
18 to determine disabilities. Some Special Education law, et
19 cetera.

20 Q. How long did it take you to obtain that Master's
21 degree?

22 A. It was an intense program of one year, or four
23 quarters.

24 Q. Prior to the time that you were running your own
25 construction company, what did you do, sir?

1 A. I taught at Auburn High School for seven years.

2 Q. And during what time frame did you teach at Auburn High
3 School?

4 A. From the fall of ninety-nine to the spring of oh six.

5 Q. How do you know Pierre Gunnings?

6 A. He was in one of my classes the first year I taught at
7 Auburn High School.

8 Q. And what year was that?

9 A. Ninety-nine to two thousand.

10 Q. Would he have been your student for the entire school
11 year?

12 A. Yes.

13 Q. How well did you get to know Pierre during that period of
14 time?

15 A. We spent an hour and-a-half together every day of the
16 week. Very well.

17 Q. What opportunity did you have to observe Pierre and his
18 ability to learn?

19 A. As good an opportunity as anybody could hope to have. He
20 was in a small class of seven to eight students, and I worked
21 hands-on with these kids every day.

22 Q. And how would you describe Pierre's intelligence?

23 A. He's a sharp guy, as far as talking with you. You can't
24 win an argument with him, I'll tell you that. But he's sharp
25 when it comes to just talking or picking up things verbally.

1 He's a pretty sharp guy that way.

2 Q. What is your opinion of Pierre Gunnings' ability to
3 read?

4 A. His ability to read is very limited. I would estimate he
5 made reading at the second grade level at that time.

6 Q. How about words such as "felony" or "indictment," would
7 he be able to read those kinds of words?

8 A. I wouldn't think so. No.

9 Q. Now you said that you taught Special Education at Auburn
10 High School. Are you familiar with the diploma that gets
11 issued to Auburn High School graduates?

12 A. Yes.

13 MR. BETHEL: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes.

16 Q. Mr. Fowler, I'm going to hand you what's been marked as
17 defendant's exhibit two. The top of this form it says
18 "Auburn City Secondary School Record". I'm handing up
19 defendant's exhibit two, Mr. Fowler. Sir, if you would,
20 please, just take a look at that form.

21 A. Okay.

22 Q. Do you recognize it?

23 A. It's a copy of Pierre's transcript from Auburn high
24 school.

25 Q. Have you seen those kinds of transcripts previously?

1 A. Yes.

2 Q. Is that the type of transcript that's issued by Auburn
3 High School?

4 A. Yes.

5 Q. If you look in the upper right-hand part of that form,
6 can you tell me what kind of diploma that Mr. Gunnings has
7 received?

8 A. It's called the Alabama Occupational Diploma.

9 Q. Would you please explain to the ladies and gentlemen of
10 the jury what an occupational diploma is.

11 A. It's a program designed by the Alabama State Department
12 of Education for students with disabilities who were unable
13 to pass the graduation exam. It was done in an effort to
14 give students some classes and training so they could at
15 least go out of school and be good employees.

16 Q. Based on what you observed of Mr. Gunnings, during the
17 time that you spent with him at Auburn High School, would it
18 have been at all possible for Mr. Gunnings to have earned a
19 regular diploma?

20 A. No.

21 Q. Take a look at that form. I have some specific questions
22 about some of the entries there. If you see under "grade
23 ten," for instance, it says "prealgebra." Would that be a
24 course that Mr. Gunnings would have been able to take?

25 A. Yes.

1 Q. Explain for the Court if you would the difference between
2 being able to do math and being able to read.

3 A. It's a huge difference. It's not at all uncommon for
4 someone to have good math skills and be unable to read. It's
5 quite common, actually.

6 Q. I'd also like for you to explain a term that we've heard
7 used in the news, for instance, "functionally illiterate".
8 What would that mean?

9 A. Just basically a person is unable to read, to decode or
10 decipher words and understanding the meaning of what those
11 words are.

12 Q. Would a person who is unable to read be able to fill out
13 basic personal information? For instance, a name and
14 address, a phone number?

15 A. If the form or the terms were familiar to them, even if a
16 person cannot read sometimes if they see the word enough
17 times, they would learn by repetitiously seeing it. Which is
18 basically what learning, is anyway. If you see a form enough
19 times where it asks for a name and phone number, you might be
20 able to fill it out.

21 Q. I'll give you answer for instance. If someone had filled
22 out personal information on a number of occasions, they might
23 recognize the word like "county" for instance?

24 A. Sure.

25 Q. So whenever they saw that word, even though they can't

1 read it the same way a normal person would know to put Lee,
2 for instance, if they were from Lee County, is that an
3 accurate description?

4 A. Right. But you need to take it on a case-by-case basis.
5 But it's very possible.

6 Q. Well let me ask you that based on what you know about
7 Pierre, based on his verbal abilities, for instance, and what
8 you know of his reading abilities, is he the kind of person
9 that even though he can't read, he might be able to fill in
10 some of that simple, basic information?

11 A. Yes.

12 Q. Mr. Fowler, I'm going to show you what's been marked as
13 defendant's exhibit one. I want to move this up closely
14 enough so that you can see it. This is simply a blown up
15 copy of a federal firearms form that someone would have to
16 fill out before they could purchase a firearm.

17 A. Okay.

18 Q. If you take a look, sir, specifically at question eleven
19 B -- or let's just back and talk about question A. Take a
20 look at some of the words there in question eleven A.

21 A. Okay.

22 Q. Is that the kind of question that Pierre Gunnings could
23 understand without someone explaining it to him?

24 A. He could not.

25 Q. How about question eleven B? Do you see that? The

1 question that talks about "indictment," "information,"
2 "felony," "imprisonment," is that the kind of question that
3 Pierre Gunnings could read without someone explaining it to
4 him?

5 A. He could not.

6 MR. BRUNSON: Your Honor, I feel like this is
7 inappropriate for Mr. Fowler to answer when he has testified
8 that he had him as a student in ninety-nine and two thousand.
9 And unless it's established what his knowledge of what his
10 abilities were in two thousand and six --

11 MR. BETHEL: Your Honor, we are going to call a
12 witness who will testify as to Mr. Gunnings' abilities in two
13 thousand and six. I'm simply trying to paint an entire
14 picture of Mr. Gunnings as many years as possible so they can
15 be sure that Mr. Gunnings cannot read now and never has been
16 able to read.

17 MR. BRUNSON: And, Your Honor, I think things have
18 changed since Mr. Fowler had him as a student, and he is not
19 an appropriate witness to testify about this.

20 THE COURT: You can bring that out on cross.
21 Overruled.

22 Go ahead.

23 Q. I'm talking about based on your knowledge, your
24 experience with Mr. Gunnings, based on what you know Mr.
25 Gunnings, are those the kinds of questions that he would be

1 able to read on his own without help?

2 A. At that time he could not have read those questions.

3 MR. BETHEL: No further questions, Your Honor.

4 THE COURT: Cross?

5 CROSS EXAMINATION

6 BY MR. BRUNSON OF SCOTT FOWLER:

7 Q. Mr. Fowler, I'm from Montgomery, but I understand that
8 Auburn High School has a very, very good reputation
9 throughout the state. Is that accurate?

10 A. Yes, sir.

11 Q. And they don't give diplomas for just as a graduation
12 gift, do they?

13 A. That's correct.

14 Q. What does E. M. P. E. N. G. three mean?

15 A. Employment English three.

16 Q. Is there any reading required with employment English
17 three?

18 A. There can be, however from the occupational program we
19 can make any number of accommodations, which includes reading
20 tests to students. We can prompt them when they're trying to
21 read. They can have additional time. Additional days to
22 complete the assignments. We cannot modify the changes the
23 curriculum requires, but any number of accommodations can be
24 made in order to help a student succeed.

25 Q. What I'm referring to is the year nineteen ninety-nine to

1 two thousand, and he in fact was one of your students back
2 then, is that correct?

3 A. Yes, sir.

4 Q. And he got a full one credit for that.

5 A. Yes, sir. I had him for life skill science and career
6 prep that year.

7 Q. Was any reading required on those courses?

8 A. I required the students to read out loud every day, and
9 that's why I'm so familiar with Pierre's inability to read.
10 I ask them to specifically read out loud so I can correct
11 them as they went along. So I saw it on a daily basis, and
12 that's why I am so familiar with his inability to read. When
13 we had written tests, I would sit with him and read the
14 questions to him.

15 Q. And that was during the school year nineteen ninety-nine,
16 two thousand?

17 A. Yes, sir.

18 Q. Are you aware that what we're talking about is an
19 application that was filled out in two thousand and six?

20 A. Yes, sir.

21 Q. Are you aware that Mr. Gunnings had the ability, being a
22 bright person, that he could make great improvement between
23 two thousand and two thousand and six?

24 A. In his reading?

25 Q. Yes, sir.

1 A. Yes. If he had continuing education, if he had someone
2 to work with him one-on-one and he had the time to devote to
3 it, he could make improvement.

4 Q. Are you aware that during this period of time, that's
5 between two thousand and two thousand six, that he in fact
6 served in the army?

7 A. Yes, sir.

8 Q. And don't you know that some reading is required to take
9 -- to be admitted into the army and to succeed in the army?

10 A. I've never been in the army.

11 Q. You looked at that form that was completed, is that
12 correct?

13 A. I think so.

14 Q. Going back to nineteen ninety-nine and two thousand, and
15 if you'd like to look at this form I'll give you this copy,
16 are any of those questions questions that you would at that
17 time have expected Mr. Gunnings to have answered?

18 A. Can I see the questions again?

19 MR. BRUNSON: May I approach, Your Honor?

20 THE COURT: Yes.

21 A. Is your question if he read this on his own, could he
22 have answered it?

23 Q. Yes. Between nineteen ninety-nine and two thousand, are
24 those questions that he would have been able to answer?

25 A. Number fourteen says, "What is your country and

1 citizenship?" And I think he probably could have gotten
2 that.

3 THE COURT: Is this reading, or comprehending or
4 both?

5 THE WITNESS: Are you asking to decode and
6 understand, or what is your question?

7 THE COURT: I don't know, I'm asking for a
8 clarification.

9 Q. I'm asking if he would have understood the written words
10 and be able to appropriately answer those.

11 A. I think "country citizenship" he would have gotten that.
12 And like "What is your state of residence?" He probably
13 could have gotten that.

14 Q. How about eleven B, "Are you under indictment or
15 information in any court for a felony or any other crime for
16 which the judge could imprison you for more than one year?"

17 A. No, sir. He could certainly read words like "are you,"
18 one more, but polysyllabics like multi-indictment or
19 information, words like that could be very challenging for
20 somebody who has a hard time reading.

21 Q. Okay. And that was in nineteen ninety-nine, two
22 thousand?

23 A. Yes, sir.

24 Q. And it's certainly that he made improvement in the
25 intervening six years?

1 A. It's possible.

2 Q. Now going back to nineteen ninety-nine two thousand with
3 Mr. Gunnings that you knew, would he have attempted to answer
4 those questions or would he have honestly said I can't read
5 it or I can't understand it?

6 MR. BETHEL: Your Honor, I think that question
7 calls for pure speculation.

8 THE COURT: I don't understand what you are asking.

9 MR. BRUNSON: I'm asking him when he was teaching
10 him, if there were questions of this nature on the form,
11 would he have attempted to answer? What would he have done
12 in nineteen ninety-nine two thousand, would he throw up his
13 hands and say I can't read it, I can't understand it.

14 A. For one thing, I would never put a question like this in
15 front of a student with reading disabilities. But if I did,
16 it could be very embarrassing that he couldn't read, and
17 that's understandable.

18 Q. Okay. When it says eleven A, "Are you the actual buyer
19 of the firearm listed on the form?" And then it gives some
20 warning under there. "Are you aware that certain questions
21 not answered appropriately would prohibit a person from being
22 able to buy a firearm?"

23 A. You're asking me if I'm aware of that?

24 Q. Yes, sir.

25 A. I guess so.

1 Q. And the answer to that is yes, isn't it?

2 A. I'm not sure I understand your question.

3 THE COURT: I don't understand it either.

4 Q. The question is, are you the actual buyer, and the answer
5 to that is yes.

6 A. Okay.

7 Q. Are you aware that if he had put no he was not the actual
8 buyer he couldn't have purchased a firearm?

9 A. You say if I were to?

10 Q. Yes, sir.

11 THE COURT: Is he aware about Mr. Gunnings, or
12 about himself?

13 MR. BRUNSON: No, sir. He is aware about himself.
14 I'm trying to get to the appropriateness of the answers, Your
15 Honor.

16 THE COURT: About himself or about somebody else?
17 I'm confused, too. I don't quite know for whom he's
18 answering.

19 MR. BRUNSON: I'm asking if he knows the
20 appropriate answer to these questions.

21 THE COURT: For him?

22 MR. BETHEL: Your Honor, I object because I fail to
23 see that that's relevant in the any way whatsoever. I really
24 can't quite understand either what Mr. Brunson is trying to
25 get at with this, Your Honor.

1 THE COURT: You're asking him how he would have
2 filled out the application?

3 MR. BRUNSON: Yes, Your Honor.

4 THE COURT: And what point are you trying to make
5 with that?

6 MR. BRUNSON: I'm trying to show that on this form
7 every question is answered appropriately to successfully
8 purchase a firearm. He didn't miss a one.

9 MR. BETHEL: Well, Your Honor, we've already had
10 testimony about that from the A. T. F. agent.

11 THE COURT: I'm not quite sure what you're trying
12 to show with this particular witness.

13 MR. BRUNSON: I'm trying to ask if he knew him in
14 nineteen ninety-nine or two thousand, would he have even
15 attempted to answer those questions. A great deal of time
16 changed up until two thousand six, and he doesn't know what
17 those changes were.

18 THE COURT: In two thousand -- in the year nineteen
19 ninety-nine, the year two thousand, could he have answered
20 those questions?

21 THE WITNESS: No. He could not have answered those
22 questions accurately.

23 Q. Okay. Would that tell you that some significant change
24 took place between two thousand and two thousand six?

25 A. Would tell me what?

1 Q. The fact that he answered these questions in an attempt
2 to purchase a firearm. You just said he couldn't have
3 answered them in two thousand.

4 MR. BETHEL: Well again, Your Honor, I object
5 because it assumes facts not in evidence. All we know is
6 that that was Mr. Gunnings' handwrighting. We already
7 established that nobody has testified here as to what the
8 circumstances were as to how those questions were answered,
9 whether he guessed, whether the person who was helping him
10 read the questions to him. There is no evidence about what
11 the predicate was as to how those letters ended up in those
12 blocks. So Mr. Brunson's question assumes facts not in
13 evidence.

14 THE COURT: You're just saying that -- I guess your
15 question is, if he filled out the form, he would have been
16 able to fill out the form?

17 MR. BRUNSON: Yes, Your Honor.

18 THE COURT: I still don't understand what this
19 witness can say. It sounds to me you just want to make an
20 argument to the jury, which is appropriate, but that has to
21 be made at the end of the case.

22 Q. But your testimony is that he wouldn't even have
23 attempted it in two thousand?

24 A. He was prone to guessing. On this it looks like he had a
25 fifty/fifty shot, yes or no, so in answer to your question,

1 guessing on numerous occasions, that's a possibility.

2 Q. And you also agree that things could have changed with
3 his reading ability and comprehension between two thousand
4 and two thousand six?

5 A. That is a possibility.

6 REDIRECT EXAMINATION

7 BY MR. BETHEL OF SCOTT FOWLER:

8 Q. Mr. Fowler, over the course of your career as a Special
9 Education teacher, did you know any people who were unable to
10 read?

11 A. Several, yes.

12 Q. Is it something that as a rule they would readily
13 admit?

14 A. No.

15 Q. Why not?

16 A. Embarrassment. Shame.

17 Q. Did you find that they would go to great lengths to hide
18 that fact?

19 A. Absolutely. Yes. Especially with male students. It
20 seems to be more of an issue of pride with the male students
21 than female students.

22 MR. BETHEL: No questions, Your Honor.

23 MR. BRUNSON: No questions.

24 THE COURT: Thank you. You may step down.

25 MR. BETHEL: Your Honor, we call Devereau Racossi.

1 Your Honor, also at this time I'd move the
2 admission into evidence of defendant's exhibit two.

3 THE COURT: What is two? May I see it?

4 MR. BETHEL: Yes, that is the Occupation and
5 Employment Act.

6 THE COURT: Admitted.

7 D E V E R E A U R A C O S S I,
8 the witness herein, having first been duly sworn or
9 affirmed to tell the truth, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. BETHEL OF DEVEREAU RACOSI:

13 Q. Ma'am, you'll have to lean into the microphone so the
14 court reporter can hear and record everything we say.

15 Mr. Racossi, in what city and state do you live?

16 A. Auburn, Alabama.

17 Q. How long have you lived in Auburn?

18 A. Since August of two thousand two.

19 Q. Ma'am, do you know Pierre Gunnings?

20 A. Yes.

21 Q. How do you know Pierre?

22 A. He is my nephew.

23 Q. How long have you known him?

24 A. All of his life.

25 Q. Since he was born?

1 A. Yes.

2 Q. How long have you lived in Auburn?

3 A. August will be six years.

4 Q. And where did you live before that?

5 A. I'm prior military. I was born and raised in Detroit,
6 Michigan. I had lived in Michigan, Alabama, North Carolina,
7 Mississippi, California. I think that's it.

8 Q. Pierre is twenty-six years old. Do you remember where he
9 would have been living when he was born?

10 A. I believe Pierre was born in New York, and I would have
11 been living in Michigan.

12 Q. How much have you gotten to see your nephew over his
13 twenty-six years?

14 A. Well, when Pierre was probably between -- he was a little
15 boy and I would see him periodically with my sister, his
16 mother, would come to Alabama. Now at some point my sister
17 moved to Alabama, and Pierre moved to Alabama, and I think
18 that either I was living up here or here on leave from the
19 military at the time. But most of my -- I guess more of the
20 time that he and I have been together have been more recent,
21 like in his adulthood than when he was growing up.

22 Q. Do you know if Pierre has ever served in the Army?

23 A. He has.

24 Q. Did he serve in Iraq?

25 A. He did.

1 Q. During the time that you have been here in Alabama, you
2 said where you spent the most time with him when he was an
3 adult, do you know if your nephew can read?

4 A. To my knowledge Pierre cannot read.

5 Q. Is this something that is well-known within the family?

6 A. Yes.

7 Q. Do you know how Pierre managed to get into the army if he
8 can't read?

9 A. My other nephew, Pierre's brother, took the A. S. B. A.

10 B. for him. It's a written test that you have to take and
11 pass to get into the army.

12 Q. What's his the brother's name?

13 A. William Gunnings.

14 Q. Do you know why his brother took the test for him?

15 A. Yes, because Pierre couldn't have passed the test.

16 Q. And the reason he couldn't have passed the test?

17 A. Because he couldn't read.

18 MR. BETHEL: No further questions, Your Honor.

19 CROSS EXAMINATION

20 BY MR. BRUNSON OF DEVEREAU RACOSI:

21 Q. Ms. Racossi, how long were you in the service?

22 A. Four years and two years served, and then eleven years
23 later two years in the Reserves.

24 Q. Lengthy military service?

25 A. Somewhat. Not really compared to the twenty years no.

1 Q. How long was your nephew Pierre in the army?

2 A. I don't really know exactly how many years Pierre did in
3 the army, but I do know he was active duty, and I do know
4 that he served active duty during war.

5 Q. What kind of discharge did he receive?

6 A. I've never viewed his D. E. Two-fourteen, but on his
7 vehicle he has a tag that says "Disabled veteran".

8 Q. Do you know what his disability is for?

9 A. I don't think it's physical, but I can't be sure because
10 I have not read any documentation.

11 Q. Do you know how long he served in the army?

12 A. I don't know.

13 Q. Do you know whether it was in excess of one year?

14 A. It was, yes.

15 Q. In your experience in the army, even after you had taken
16 the entrance test and then admitted, don't you then go to
17 basic training?

18 A. Yes.

19 Q. Isn't reading required while you're at basic training?

20 A. Yes.

21 Q. And for a person, anybody, your nephew or anybody else,
22 they would have to satisfactorily complete basic training in
23 order to get a discharge, wouldn't they?

24 A. I'm sorry, repeat the question.

25 Q. You've just acknowledged that reading is required in the

1 military.

2 A. Yes.

3 Q. And in if a person is not able to complete those
4 requirements, those assignments in the military, they would
5 be discharged, wouldn't they?

6 A. I'm not in a position to answer that.

7 Q. You served in the military.

8 A. I did, but I'm able to read. I couldn't answer that.

9 MR. BETHEL: Your Honor, this witness has not
10 testified that she's a member of the judge advocate's corps
11 or that she's a paralegal or if she worked in administrative
12 discharges. She said she doesn't know. She was asked and
13 answered that question, Your Honor, so I object to repeating
14 the question because she has no personal knowledge.

15 THE COURT: If she doesn't know, then let's move
16 on.

17 Q. To your knowledge, your nephew was not discharged because
18 he could not read, was he?

19 A. I don't know why he was discharged.

20 Q. When did he serve?

21 A. When you say "when," do you mean year-to-year?

22 Q. Yes, ma'am.

23 A. I don't know. I only know for sure that he served during
24 wartime. I don't know how many years.

25 MR. BRUNSON: No further questions.

1 THE COURT: Redirect.

2 REDIRECT EXAMINATION

3 BY MR. BETHEL OF DEVEREAU RACOSSI:

4 Q. Ms. Racossi, are soldiers who serve in a unit together,
5 especially during wartime, are they a rather close-knit
6 bunch?

7 A. They can be, yes.

8 Q. Would you be surprised if some of Pierre's army buddies
9 would have taken care of him, so to speak, when he was in the
10 army when it came to having to read or write anything?

11 A. No, I wouldn't be surprised.

12 Q. In other words, that's something that army buddies might
13 do?

14 THE COURT: Only if you know whether this occurs.

15 A. I'm an ex-marine, and I did, yes.

16 MR. BETHEL: No Further questions, Your Honor.

17 THE COURT: Go ahead.

18 MR. BRUNSON: No questions.

19 MR. BETHEL: Your Honor, may this witness be
20 excused?

21 THE COURT: Yes.

22 (Whereupon the witness, Devereau Racossi, stepped
23 down from the stand.)

24 THE COURT: Next witness.

25 P R I S C I L L A B U T L E R,

1 the witness herein, having first been duly sworn or
2 affirmed to tell the truth, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MS. MASON OF PRISCILLA BUTLER:

6 Q. Good afternoon, Ms. Butler.

7 A. Good afternoon.

8 Q. Ms. Butler, where do you live?

9 A. I live on -- My address?

10 Q. No, not your street address, just the city and state.

11 A. Auburn, Alabama.

12 Q. And how long have you lived in Auburn, Alabama?

13 A. Practically all my life.

14 Q. And, Ms. Butler, what is your relationship to Pierre
15 Gunnings?

16 A. I'm his grandmother. Stepgrandmother.

17 Q. And has Pierre ever lived with you?

18 A. Sure. He has.

19 Q. What were the circumstances, the reason why Mr. Gunnings
20 lived with you?

21 A. Well, my husband, his mother -- my husband and his mother
22 -- well, she was having some problems and my husband and I
23 received custody of Pierre.

24 Q. When was it that you got custody of Mr. Gunnings and his
25 brother?

1 A. I'm not sure of the year, but Pierre was thirteen.

2 Q. Thirteen years old?

3 A. Mm-hmm.

4 Q. And ever since he was thirteen years old he lived with
5 you?

6 A. Until he was nineteen.

7 Q. Until he was nineteen.

8 A. Yes.

9 Q. Now what is your knowledge of Mr. Gunnings' ability to
10 read?

11 A. Well, I know he had problems reading. He couldn't.

12 Q. When did you first discover that he was having problems
13 reading?

14 A. Right after he moved in with us. I used to help him with
15 his homework, and he had problems reading and I would help
16 him with it.

17 Q. Could you give an example of the kinds of problems he
18 would have with his homework?

19 A. Well, reading. And if he wanted to spell a word,
20 sometimes he could ask me how to spell it. And he struggled
21 in trying to read.

22 Q. Did you ever have him tested or evaluated for his reading
23 problems?

24 A. No. But my husband, actually he went to the school to
25 have conferences with his teachers, and at that time he was

1 told that he had problems reading and that they wanted to
2 test him. I don't know the outcome of the tests or anything
3 like that, but he was tested at school.

4 Q. Do you know if Mr. Gunnings has ever been diagnosed with
5 a learning the disability?

6 A. No, I don't know.

7 Q. Now to your knowledge, was Mr. Gunnings ever in the
8 army?

9 A. Yes.

10 Q. To your knowledge did he ever serve in Iraq?

11 A. Yes.

12 Q. Do you know how it was that Mr. Gunnings was able to
13 enlist in the army?

14 A. Not really, no.

15 Q. Based on your knowledge of Mr. Gunnings' ability to read,
16 do you know if he's made any progress from the time he was
17 thirteen until now?

18 A. I don't think so.

19 MS. MASON: I don't have any further questions.

20 CROSS EXAMINATION

21 BY MR. BRUNSON OF PRISCILLA BUTLER:

22 Q. In your last answer, what are you basing that on, you
23 "don't think so"?

24 A. You mean how did he get into the army?

25 Q. No, ma'am. The last question you were asked, I believe,

1 was has he made any progress, and you said, "I don't think
2 so."

3 A. He didn't before he left my home.

4 Q. But that was when he was nineteen.

5 A. Right.

6 Q. And how old is he now?

7 A. Twenty-six right now.

8 Q. So that's seven years. He could have made progress.

9 A. Yes, but I have talked to Pierre, and Pierre, like giving
10 him addresses when he was in the service, I had to spell
11 everything that I -- you know, if I was giving him my
12 daughter's address in Atlanta or something, my home address
13 or something, I would have to spell each word to him. Each
14 letter I would have to spell out.

15 Q. And was this for him to write letters to other people?

16 A. Yeah. To me or my daughter.

17 Q. And he could do that after you helped him?

18 A. No. I never received a letter, although I gave him the
19 address.

20 Q. Did you ever send him any letters?

21 A. No. He preferred calling me and talking to him because
22 he had trouble reading the letters.

23 Q. But your knowledge of this is from when he was thirteen
24 and nineteen, which is seven years ago?

25 A. Yes. But like I say, when he calls me he would request

1 the address or something. I would have to spell it.

2 Q. How long ago was that?

3 A. That was while he was serving in the army.

4 Q. And how long ago was that?

5 A. It was probably four or five years ago.

6 MR. BRUNSON: No further questions.

7 MS. MASON: No further questions.

8 THE COURT: You may step down.

9 (Whereupon the witness, Priscilla Butler, stepped
10 down from the stand.)

11 MS. MASON: Your Honor, may she be excused?

12 THE COURT: Unless you want to keep her.

13 MS. MASON: No.

14 THE COURT: Next witness.

15 MS. MASON: Anthony Davis.

16 A N T H O N Y D A V I S,

17 the witness herein, having first been duly sworn or
18 affirmed to tell the truth, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MS. MASON OF ANTHONY DAVIS:

22 Q. Good afternoon, Mr. Davis.

23 Mr. Davis, where do you live?

24 A. I live in Auburn.

25 Q. How long have you lived in Auburn?

1 A. I lived off and on back and forth California to Auburn,
2 but like recently I've lived here about six years.

3 Q. What is your relationship to Pierre Gunnings?

4 A. First cousin.

5 Q. Now, Mr. Davis, what is your knowledge about Mr.
6 Gunnings' ability to read?

7 A. He cannot.

8 Q. When did you first learn that he could not read?

9 A. I was about ten years old.

10 Q. What were the circumstances around that time that let you
11 know that Mr. Gunnings could not read?

12 A. Just watching him struggle with his homework.

13 Q. Could you give an example of the struggle that he had?

14 A. Sometimes he would ask me how to spell words.

15 Q. And you were ten years old at the time?

16 A. Yes.

17 Q. How would was he?

18 A. He might have been about sixteen.

19 Q. Do you have any other examples of circumstances that you
20 found out that Mr. Gunnings could not read?

21 A. One time recently, about two years ago, he flat out told
22 me that he could not read.

23 Q. Was that common knowledge within your family?

24 A. I'm really not sure, because I know he tried to keep it a
25 secret.

1 Q. And when you say "he tried to keep it a secret," Who did
2 he try to keep it a secret from?

3 A. Really, from everybody.

4 Q. Do you know why?

5 A. I don't know why.

6 Q. But you do know that he cannot read?

7 A. I do know that.

8 Q. And you've known that ever since you were ten years
9 old?

10 A. Yes.

11 Q. And how old are you now?

12 A. I'm nineteen.

13 Q. I have no further questions.

14 THE COURT: Cross?

15 CROSS EXAMINATION

16 BY MR. BRUNSON OF ANTHONY DAVIS:

17 Q. Mr. Davis, what do you do now, are you in school?

18 A. Not right now.

19 Q. How often do you have contact with your cousin Pierre?

20 A. Used to be every day.

21 Q. What is "used to be"?

22 A. Before he got locked up.

23 Q. Okay. Do you know when that was?

24 A. Actually, I just got back from a vacation, and he had
25 gotten locked up then. But when I was here, we saw each

1 other every day.

2 Q. And you say it was about two years ago that he told you
3 he couldn't read?

4 A. Yes.

5 Q. And was that roughly in two thousand six?

6 A. I'm really not sure.

7 Q. Is that about the time he got in trouble for this
8 firearms offense?

9 A. I'm not sure.

10 Q. But it could have been?

11 A. I'm really not sure.

12 Q. Did he tell you that he was in trouble?

13 A. No.

14 Q. You didn't even know it?

15 A. No.

16 MR. BRUNSON: No further questions.

17 REDIRECT EXAMINATION

18 BY MS. MASON OF ANTHONY DAVIS:

19 Q. Mr. Davis, have you ever had an opportunity to help Mr.
20 Gunnings in his problems not being able to read?

21 A. Yeah, I have. Me and him, he tried to register for
22 Southern Union, and --

23 Q. I'm sorry. Would you tell us what Southern Union is?

24 A. It's a community college in Opelika, Alabama. It's like
25 a two year community college. And he tried to register, and

1 there were papers that he had to fill out. And I pretty much
2 sat with him right, next to him, I sat there and listened to
3 him tell the lady like, "I'm not even going to play around
4 with you, I cannot read." And so even still, it was
5 something he had to do so we had to fill those papers out and
6 I sat with him, step by step read out everything, read his
7 information, read what I needed to know and, you know, helped
8 him like that.

9 Q. When was that?

10 A. It was a while back. Maybe almost two or three years
11 ago. It was a while back.

12 Q. Have you done anything like that for him at any other
13 time, helped him to fill out forms?

14 A. Not recently.

15 Q. Have you ever sent text messages to him?

16 A. I have not.

17 MS. MASON: I have no further questions.

18 MR. BRUNSON: Nothing further, Your Honor.

19 THE COURT: Thank you. You may step down.

20 (Whereupon the witness, Anthony Davis, stepped down
21 from the stand.)

22 THE COURT: Next witness.

23 MS. MASON: William Gunnings.

24 THE COURT: How many more witnesses do you have?

25 MR. BETHEL: We have five more witnesses, Your

1 Honor.

2 THE COURT: I'm just trying to get an idea of how
3 the schedule will work out today.

4 W I L L I A M S G U N N I N G S,
5 the witness herein, having first been duly sworn or
6 affirmed to tell the truth, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. MASON OF WILLIAM GUNNINGS:

10 Q. Mr. Gunnings, where do you live?

11 A. Right now I live in Bonaire, Georgia.

12 Q. Could you spell the name of that city for us?

13 A. B-o-n-a-i-r-e, Georgia. Three one zero zero five.

14 Q. What do you do for a living?

15 A. I right now I work with Perdue Farms. It's a poultry
16 company. I'm a production supervisor.

17 Q. Have you ever been in the military?

18 A. Yes, ma'am.

19 Q. What branch?

20 A. I was in the armed forces, the army. I went right after
21 high school.

22 Q. So you're familiar with the procedures that one must
23 undertake to enlist in the military?

24 A. Yes, ma'am.

25 Q. And what type of test do you have to take to enlist in

1 the military?

2 A. You have to take a A. S. B. A. B. test.

3 Q. And you've taken this A. S. B. A. B. test?

4 A. Yes, ma'am.

5 Q. What is your relationship to Pierre Gunnings?

6 A. I'm his next oldest brother. I'm the brother that's the
7 oldest. We had one more that passed away last year in April
8 that was actually older than me. But I'm his oldest living
9 brother.

10 Q. Can you describe to us, please, your circumstances
11 growing up, you and your brother?

12 A. Me and Pierre, we're the only two siblings that had the
13 same Mom and Dad. We grew up in Brooklyn, New York. We grew
14 up basically poor, so to speak. We lived in shelters and low
15 income housing with our parents. Both our parents were on
16 drugs. And they both died at a very young age in their lower
17 forties.

18 Q. Now, Mr. Gunnings, after your parents died what role did
19 you play in Pierre's upbringing?

20 A. My father died in ninety-five. I want to say February.
21 I can't remember exactly the date. My mother died about a
22 week and-a-half after I graduated from high school, which is
23 nineteen ninety-six. I'm four years older than Pierre, and
24 all along when my parents were alive, I kind of looked over
25 him. I remember working at Burger King in high school,

1 feeding him, other family members taking care of him.

2 I was like a father figure to Pierre. I always
3 looked over him. Even in New York I would fight for him or
4 whatever.

5 Q. Mr. Gunnings, can your brother read?

6 A. No. He's always had a problem with literacy. We
7 basically been knowing that for a long time with Pierre.

8 Q. You said we've known that for a long time, who are you
9 referring to?

10 A. My parents that were living. My oldest brother that
11 died. It's kind of something we hear from a lot of people,
12 because it was his personal problem but the people close
13 enough to him knew.

14 Q. Now was your brother ever in the military?

15 A. Yes, ma'am.

16 Q. Did you suggest to him to enlist in the military?

17 A. Yes. Actually, when I was in the military, because when
18 I got out of high school I looked over him, when I was in the
19 military I would send stuff to him, shoes, things like that
20 because both of our parents were deceased and he was living
21 with our grandparents. So I would, you know, try to look
22 over him as much as I can even though I was far away.

23 Once I got stationed in Georgia, it was about four
24 and-a-half hours away, some weekends I would pick him up and
25 let him stay with me to see what I go through.

1 Q. Did you suggest that he enlist in the military?

2 A. Yes, ma'am. Actually, after I got out of the military I
3 went to California in ninety-nine. I spent about two years
4 in California. I came back to Alabama in two thousand and
5 two and enrolled in Tuskegee University.

6 At the time Pierre was living with a high school
7 girlfriend. He was unemployed at the time. He was
8 unemployed at the time.

9 Q. Okay, Mr. Gunnings. I'm sorry, but I'm going to have to
10 ask you to lean up again closer to the mic so everyone can
11 hear you.

12 A. Sorry.

13 At that time when I was headed back to California,
14 Pierre was actually living with his girlfriend. She was
15 going to school and working. And at that time with me going
16 to school and trying to do something productive, I'd say,
17 "What are your plans now that you're out of school?"

18 And one day him and the girlfriend broke up. I
19 would look after him, take them out to eat at sometime and
20 ask, "Why don't you go into the army? You can get a trade
21 that you could use." So I talked to him a lot about the
22 armed forces.

23 Q. To your knowledge, did your brother Pierre Gunnings
24 attempt to take the A. S. B. A. B. test himself?

25 A. To my knowledge, to my knowledge he took that twice.

1 Q. And what were the results? Without knowing specifically
2 what the number result was, do you know how well he did on
3 those tests?

4 A. I know that he didn't do well enough for his scores to
5 get him in. I think the minimum score on the A. S. B. A. B.
6 would be would like a thirty-three or something, and he was
7 somewhere in the teens.

8 Q. So how was it that Mr. Gunnings ended up in the military
9 if he had failed the A. S. B. A. B. himself twice?

10 A. Well, as can you see, me and my brother favor a lot, so I
11 took the A. S. B. A. B. for him. I actually took his
12 driver's license and memorized his Social Security number and
13 went in and took the test for him.

14 Q. To your knowledge, did the recruiter know about this?

15 A. I think so. I'm pretty sure he knew because his
16 recruiter had mentioned that the score that Pierre received
17 of his last A. S. B. A. B. score to the score that I gave him
18 when I took the test was drastically higher. At that time I
19 think he was trying to say that the original score was
20 sixteen and your second score is like a sixty-five. But I
21 wanted him to get in.

22 MS. MASON: I have no further questions.

23 THE COURT: Cross?

24 CROSS EXAMINATION

25 BY MR. BRUNSON OF WILLIAM GUNNINGS:

1 Q. When did you take the test for your brother?

2 A. Sir, actually I don't know the actual date and time, but
3 I believe he enrolled right after Thanksgiving. So I would
4 say three months prior to Thanksgiving.

5 Q. Of what year?

6 A. I want to say two thousand two because I got to Alabama
7 in two thousand two.

8 Q. Two thousand two?

9 A. I think so, sir. I believe it's two thousand two.

10 Q. Did you ever talk to your brother about what he would be
11 doing in the army? I know you said you invited him to go to
12 Georgia with you when you were stationed there. Did you ever
13 talk to him and tell him what he would be doing?

14 A. Yes. I explained to him a lot. Because when you have a
15 brother that you're very close with, actually what you're
16 doing is we work out in the morning. You know, I, myself,
17 was a nineteen kilo, which was a tanker. I worked around
18 tanks, so I explained to him what my life was like. And I
19 also tried to share with him some of my knowledge of the
20 military so when he joined he -- I didn't like my job so I
21 tried to explain to him when you go, don't take this job, do
22 this. I actually tried to talk him into doing some kind of
23 truck driving position.

24 Q. Did you talk to him about basic training?

25 A. Yes, sir. Pierre was a student athlete in high school,

1 so I knew that the physical aspect of basic training would be
2 easy for him. He played a little football. Me and him
3 played a lot of pickup basketball.

4 Q. What did you tell him about the written test when was
5 going into the army and taking other courses that were
6 necessary for advancement?

7 A. Well I didn't tell him much about that because to my
8 knowledge the written test aren't taken until you go further
9 up in rank. Our initial goal was for him to go in and do
10 three years and come out with some technical skills. So I
11 didn't talk to him much about the non-commissioned test you
12 have to take to be a sergeant or above.

13 Q. How many years did he serve?

14 A. He served three years.

15 Q. He served three full years. And went to Iraq?

16 A. Yes.

17 Q. Isn't there an army code book or handbook they assign to
18 everybody who enters the army?

19 A. Yes, they do assign that book, and that book basically a
20 lot of the things in the book you learn through experience.
21 Just like it's a lot of repetitive things. You can refer
22 back to the book if you need to, but to be honest I didn't
23 read the book much, I learned through generally following
24 orders.

25 Q. And Pierre Gunnings served three successful years in the

1 army?

2 A. Yes, sir, to my knowledge.

3 MR. BRUNSON: No further questions.

4 REDIRECT EXAMINATION

5 BY MS. MASON OF WILLIAM GUNNINGS:

6 Q. Mr. Gunnings, what did your brother do in the army?

7 A. He was infantry. I'm not sure what the code was. I want
8 to say eleven bravo, or something like that. I'm not sure.
9 You know, I was nineteen kilo.

10 Q. Can you explain what "infantry" is?

11 A. Infantry is a lot of the grunt work. It's not like
12 secretary or something like that. Infantry is what you would
13 consider basically an M-sixteen was basically what they were
14 responsible for, shooting an M-sixteen. They were soldiers.
15 Infantry, it really doesn't have -- what's the word I'm
16 looking for -- It really didn't transfer over to civilian
17 life. You learn how to fight.

18 Q. Do you know what his discharge was?

19 A. No, ma'am. I do not know his discharge, what it was.

20 MS. MASON: No further questions.

21 MR. BRUNSON: Nothing further, Your Honor.

22 THE COURT: Thank you. You may step down.

23 (Whereupon the witness, William Gunnings, stepped
24 down from the stand.)

25 MR. BETHEL: Your Honor, we call Tequila Griffin to

1 the stand.

2 T E Q U I L A G R I F F I N ,

3 the witness herein, having first been duly sworn or
4 affirmed to tell the truth, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. BETHEL OF TEQUILA GRIFFIN:

8 Q. Good afternoon, Ms. Griffin.

9 A. Hi, good afternoon.

10 Q. Please lean forward and speak into the microphone so the
11 court reporter can record everything you say.

12 Ms. Griffin, in what city and state do you live?

13 A. I live in Auburn, Alabama.

14 Q. How long have you been a resident of Auburn?

15 A. Since two thousand and six.

16 Q. Do you remember what month it was when you moved to
17 Auburn?

18 A. It was in May.

19 Q. So just about two years ago?

20 Do you know Pierre Gunnings?

21 A. I do.

22 Q. How do you know Mr. Gunnings?

23 A. Me and Pierre dated. We were in a relationship together.

24 Q. When did you first meet him?

25 A. Two thousand and six at Auburn University.

1 Q. Do you remember how long it was after you moved to Auburn
2 that you first met Mr. Gunnings?

3 A. I do not.

4 Q. Was it a week? A month? A year?

5 A. A couple of months.

6 Q. So sometime during the summer of two thousand and six?

7 A. Yes, sir.

8 Q. And how soon after you met him did you begin dating
9 him?

10 A. Maybe a week or two.

11 Q. How did you all meet?

12 A. We had met on campus at Auburn University.

13 Q. And where on the campus?

14 A. It was by the Pharmacy School.

15 Q. How did you meet him?

16 A. He just spoke to me every time I went to class.

17 Q. How long did you date Mr. Gunnings?

18 A. We dated for a year.

19 Q. During the time that you dated Mr. Gunnings, during the
20 year that you dated Mr. Gunnings were you ever able to
21 determine whether Pierre Gunnings can read?

22 A. Yes.

23 Q. And can Pierre Gunnings read?

24 A. No.

25 Q. Could he read during the time that you dated from two

1 thousand and six until two thousand and seven?

2 A. No.

3 Q. Would that include the time period of December, two
4 thousand and six?

5 A. Yes.

6 Q. How did you learn that Pierre cannot read?

7 A. Because I would go with Pierre to the V. A. Hospital in
8 Montgomery, and I would fill out the paperwork for him. And
9 I also did his lease at the realty place.

10 Q. When you say you "did his lease," what do you mean by
11 that?

12 A. I filled it out for him.

13 Q. Did you ever have to read anything to him?

14 A. Yes.

15 Q. Now you had you said you went with him to the V. A.
16 center?

17 A. Mm-hmm.

18 Q. And you helped him fill out forms there?

19 A. I actually filled them out.

20 Q. Do you know what those forms were for? What the forms
21 were for? What was the reason that he was there and you were
22 helping him fill out this?

23 A. It was checking him medically for his back.

24 Q. And that was related to what?

25 A. The military.

1 Q. Do you have any idea what his -- what kind of a discharge
2 he received from the army?

3 A. I do not.

4 Q. But you know that he was there seeking V. A. benefits?

5 A. Yes.

6 Q. Is there any doubt in your mind whether or not Pierre can
7 read?

8 A. No.

9 MR. BETHEL: No further questions, Your Honor.

10 CROSS EXAMINATION

11 BY MR. BRUNSON OF TEQUILA GRIFFIN:

12 Q. Ms. Griffin, Let me ask you to look at this form that has
13 been introduced as Government's exhibit one A.

14 You're a college student, is that correct?

15 A. Yes.

16 Q. Can you read?

17 A. I can.

18 Q. Can you read that clearly?

19 A. I can.

20 Q. Is that the typed form that you would help Mr. Gunnings
21 fill out at the V. A.?

22 A. Yes.

23 Q. If you knew that those answers were provided by Pierre
24 Gunnings, would you believe that?

25 MR. BETHEL: Your Honor, I'm sorry. I find that

1 question confusing. And apparently from the raised brow, so
2 does the witness.

3 THE COURT: I'll allow it.

4 A. By himself?

5 Q. Yes.

6 A. No, he could not have filled this out.

7 Q. The fact that it is -- Is his name on that form?

8 A. It is.

9 Q. The fact that his name is on that form and is filled out
10 and testimony here has been that it was by him, is that
11 something that you would not believe could happen?

12 A. I don't understand the question.

13 Q. You're saying you don't believe he could have filled that
14 form out, is that correct?

15 A. Correct.

16 MR. BRUNSON: No further questions, Your Honor.

17 THE COURT: Anything else?

18 REDIRECT EXAMINATION

19 BY MR. BETHEL OF TEQUILA GRIFFIN:

20 Q. Ms. Griffin, you were not working at the pawnshop when
21 that form was filled out?

22 A. No, I wasn't.

23 Q. So you didn't fill it out?

24 A. Right, I wasn't there.

25 Q. So you don't have any knowledge about how that form got

1 filled out?

2 A. Exactly.

3 MR. BETHEL: No further questions, Your Honor.

4 THE COURT: Anything else?

5 MR. BRUNSON: No, Your Honor.

6 THE COURT: You may step down.

7 (Whereupon the witness, Tequila Griffin, stepped
8 down from the stand.)

9 MR. BETHEL: I would request a short recess.

10 THE COURT: Why?

11 MR. BETHEL: Well, I would need a comfort break,
12 number one; number two, there is a brief matter concerning
13 our other witnesses I would like to discuss with the Court
14 outside the hearing of the jury.

15 THE COURT: Okay. I'll excuse the jury. We'll
16 make it a five minute recess.

17 How many more witnesses do you have?

18 MR. BETHEL: I have three, Your Honor.

19 THE COURT: Let's just take a five minute recess.
20 I want to get as much evidence in as we can today so we can
21 get the case to you tomorrow.

22 Don't forget to turn your notes over in your
23 chairs, and do not discuss the case.

24 (Whereupon the jury was escorted out of the
25 courtroom, and the following colloquy ensued):

1 MR. BETHEL: Your Honor, I have an issue concerning
2 one of my witnesses. We have a witness who is supposed to be
3 here from Bozeman, Montana. He served in the army with Mr.
4 Gunnings. He is what I think is best described, and a number
5 of people from my office have spoken with him, he's what I
6 would describe as a little flaky or squirrely. It was very
7 difficult to the get his cooperation in traveling from that
8 distance. He is a farmer, he calls himself, an organic
9 farmer. He has animals to take care of. He has a number of
10 excuses.

11 We finally got him to get on an airplane even
12 though this morning we were still coaxing him to do that, but
13 I did not realize we would go this quickly. He flatly
14 refused to come yesterday. He is going to travel today and
15 is due to arrive at the Montgomery airport at five-fifteen.

16 I apologize to the Court for not having him here
17 earlier than this, and I beg the Court's indulgence. At this
18 point he is the person that I would like to call next if at
19 all possible. I have -- He will be relatively short as will
20 another witness.

21 THE COURT: Let's go ahead and do your other
22 witnesses. We'll take him in the morning.

23 MR. BETHEL: Very well, Your Honor.

24 The last witness that we would call today is Ms.
25 Patsy Thomas.

1 THE COURT: Is she your last witness?

2 MR. BETHEL: We have one other, Jamaal Byrd, and
3 then the gentleman from Montana.

4 THE COURT: Let's do those two, and then we'll do
5 your quirky witness in the morning.

6 MR. BETHEL: We'll call Ms. Thomas when we return.

7 THE COURT: So the only one we should take is the
8 farmer, is that correct?

9 MR. BETHEL: That's correct.

10 THE COURT: We'll take a five minute recess, and
11 when we come back we'll hear all of your witnesses except the
12 farmer.

13 (Whereupon, a recess was taken.)

14 THE COURT: Proceed.

15 P A T S Y T H O M A S,

16 the witness herein, having first been duly sworn or
17 affirmed to tell the truth, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MS. MASON OF PATSY THOMAS:

21 Q. Good afternoon, Ms. Thomas.

22 A. Good afternoon.

23 Q. Ms. Thomas, where do you live?

24 A. In Auburn, Alabama.

25 Q. How long have you been a resident of Auburn, Alabama?

1 A. My family and I moved to Auburn in nineteen fifty, but I
2 married and moved away for a lot of years. I have been back
3 for ten years. Well, about twelve years, actually.

4 Q. When you moved away, where did you go?

5 A. I lived all over. I married a military person and we
6 lived all over the world.

7 Q. What do you do for a living?

8 A. I have been in education all my life. When I finished
9 Auburn University in sixty-six, I taught school, various
10 junior highs all over, and I worked two summers in the
11 military with G. E. D. and found out that working with adults
12 was something that I really loved to do.

13 And then when I came back to Auburn, I was teaching
14 G. E. D., and then I started working at the university in an
15 outreach program. And then I became director in two thousand
16 one of the Lee County Literacy Coalition from two thousand
17 one to two thousand five.

18 I'm now retired and spend my time as president of
19 the board of the Lee County Literacy Coalition.

20 Q. Before we talk about the Lee County Literacy Coalition I
21 want to talk to you about your educational background. You
22 said you went to Auburn; what degrees do you hold from Auburn
23 University?

24 A. I hold a B. S. in secondary science education, and a
25 Master's in secondary education.

1 Q. Is Auburn University the only institution you attended?

2 A. No. I actually went to various schools. I thought about
3 getting my Doctorate. I went to school in -- you know what?
4 I can't even remember some of them being in the military, but
5 I went to Troy State in Heidelberg, Germany, taking adult ed
6 classes. I took some in Louisiana, and I think some from
7 Arizona but since I'm sitting in this seat I'm not going to
8 swear to that.

9 Q. You said that you were the president of the board of the
10 Lee County Literacy Coalition. What is that?

11 A. In the Lee County we have a very strong United Way, and
12 the coalition is one of about thirty agencies that work from
13 a non-profit way. We have one paid employee, the director,
14 and the rest of the people involved are volunteer tutors,
15 which I am myself now. And we help people in the county who
16 are in need of basic literacy skills, be it math or learning
17 to fill out forms for a job, or reading, or preparing for the
18 graduation exam if they're already out of high school and
19 haven't passed that, or studying to get into a G. E. D.
20 classroom.

21 Q. How long have you been a volunteer tutor?

22 A. I started volunteering when I first came back to Auburn,
23 and that was in ninety-five.

24 Q. And is this program for adults only?

25 A. Not really. We are mostly for adults, but we do have two

1 outreach programs in Opelika and one in Auburn. But
2 primarily it's for adults because they are the ones that the
3 County feels might have slipped through the cracks.

4 Q. Now what are your duties as a volunteer tutor? What kind
5 of things do you do?

6 A. Really we try to meet the needs of the individual that
7 we're tutoring, be it math skills or reading skills or just
8 life skills.

9 Q. Ms. Thomas, do you know Pierre Gunnings?

10 A. I sure do.

11 Q. How do you know him?

12 A. I met Pierre, I don't know if it was -- it was January,
13 February or March of two thousand six. And I had just
14 retired from being director, and I had told the new director
15 that if anyone came along that needed help, especially if
16 they had a military background, that I would like to be
17 involved because with my military background I just thought I
18 could help there.

19 Q. So was Mr. Gunnings assigned to you?

20 A. Yes, he was. He had called the Literacy Coalition and
21 said that he needed reading help, and the director knew what
22 I had said to her and she called me about doing that and I
23 said that I would.

24 Q. So you said that Mr. Gunnings called; he voluntarily
25 sought help to read?

1 A. Oh, yes. That was not the first time he had sought help
2 with the Coalition. He had done so, I think he was fourteen
3 or so still in Auburn High School when he called the
4 Coalition for help. Because he knew the program, even as a
5 high school student because one of his best friends' father
6 was a tutor with us and he knew even at that early age that
7 he needed reading help.

8 Q. Were you a volunteer tutor at the time when he was
9 fourteen years old and first came to the center?

10 A. No.

11 Q. So you have been working with Mr. Gunnings since either
12 somewhere in January, February or March of two thousand
13 six?

14 A. Right. It's on the intake form, I've just forgotten what
15 it was.

16 Q. Now, when you were working with Mr. Gunnings, what kind
17 of problems did you see that he had?

18 A. Well, when we first started working together I didn't
19 realize that he had quite as bad a reading problem as he
20 does. We started out -- because as a volunteer you don't
21 quite know. We don't do any real testing because we just
22 take somebody where they are and they are adults so they can
23 usually tell what you they need.

24 But I had started with Pierre at probably -- well,
25 I'm sure at a much higher level than I needed, but it was

1 insightful to me when I realized one day I had some really
2 basic reading books on putting sounds together. And he saw
3 them and said, "Let me see those books." He said, "I think
4 we should start working in these books." And these was a
5 Laubauch one book. So we started working with those, really
6 with many new words, a few new words and lots of sight
7 words.

8 Q. And what kind of words were in this book that he wanted
9 to read from?

10 A. This first one started with something like, I think one
11 of the books that went along with the series was called
12 *Indian River*. And it was like, "This is Indian River." And
13 so "this is" would be the two sight words in that sentence,
14 and then we would be studying Indian River and we would be
15 paying attention to the sound of the I in the "Indian" and
16 the different sounds that make up "River".

17 So it was very short sentences that could be broken
18 down into sounds.

19 Q. Now what would a typical tutoring session consist of?

20 A. Well, normally we only meet once a week for an hour. And
21 that's the way I start off with people that I'm helping,
22 because first I want to see if they're going to be punctual
23 and if they are motivated, and if they are courteous.

24 Q. Was Mr. Gunnings punctual?

25 A. Absolutely. And so when that happens, then I will say if

1 I have time, you know, well I'll meet with them twice a week
2 because you really need more than that. So the way it stood
3 with Pierre and I, I don't live far from the place that we
4 tutor, so I had told him that I could pretty much meet him
5 any time he had an hour. So we worked it that way. Instead
6 of regular times, we would meet whenever we could.

7 And our typical session, it's at a public library,
8 we would spend a few minutes talking about just small talk,
9 and then we would -- usually he would say, "Let's get on into
10 reading." Because I would always ask him to read something,
11 the sports page in the newspaper, look it over, look at words
12 that he might know or doesn't know and bring those back to
13 me. Just read something.

14 Then we would spend our time reading, or we would
15 go over part of the sight words that we were working on, and
16 he would write those down in his tiny, tiny handwriting and
17 we'd go over those.

18 Sometimes we did some math.

19 Q. What would you say the most advanced word that he would
20 work on would be?

21 A. On the sight word list?

22 Q. Yes.

23 A. That's a good question.

24 Q. Or maybe something like an example of something like the
25 most advanced word.

1 A. Okay. Well, "where" might be a good one. W-h-e-r-e,
2 where.

3 Q. Now, Ms. Thomas, is there a relation between not being
4 able to read and being able to write?

5 A. A lot of people that are nonreaders or reading just a
6 little bit know how to write a lot of basic things because of
7 coping skills.

8 You know, people that don't read well don't want
9 the world to know that, so they have learned to write the
10 kinds of things they know that we're all going to be asked to
11 write on forms and such as that. So I don't think there is
12 any correlation in that.

13 Q. Did you and Mr. Gunnings work on things like writing his
14 name and filling out forms?

15 A. No. We didn't. All the writing I ever really saw Pierre
16 do, because he knew how -- Pierre knew how to cope. He could
17 do that. But I would have him write or actually he would say
18 when we would come to a new word he would start a list. And
19 like I said, he'd write so tiny that I would say, you know,
20 "Can't you write larger than that?" But that's the way he
21 writes. But I always felt -- I think writing tells a lot
22 about a person. And so I always thought that he was just
23 being very inward about himself by writing so small. And
24 probably because he didn't feel confident about the way he
25 read.

1 Q. Would it be safe to say that he could copy a word that he
2 sees in front of him?

3 A. Yes.

4 Q. And he can write a word if he's directed to write it or
5 if it's spelled for him?

6 A. Absolutely.

7 Q. But he cannot read advanced words.

8 A. Absolutely not.

9 Q. Ms. Thomas, I want to show to you what we've entered as
10 defendant's exhibit one. And this is the form that Mr.
11 Gunnings filled out. Can you see this?

12 A. Yes.

13 Q. Now based on what you know about Mr. Gunnings, would he
14 be able to fill in the basic information, his name and
15 address?

16 A. Yes.

17 Q. Now starting down here where these questions begin, could
18 he read and understand these questions?

19 A. I'm already seeing words that there is no way that Pierre
20 would know.

21 Q. For example --

22 A. For example in A I'm seeing "firearms". Maybe "actual".
23 "Warning". "Acquiring". "Behalf". "Another".

24 THE COURT: Are you saying he would or would not?

25 THE WITNESS: He would not know those words.

1 Q. And most specifically "indictment"?

2 A. Oh, no.

3 Q. What about "information"?

4 A. No.

5 Q. "Felony"?

6 A. No. Like on something like "information", if we were
7 studying together, he was getting so that he could sound that
8 out. But "felony"? No.

9 Q. However he could write "yes" and "no" if he were directed
10 to write those words.

11 A. Absolutely.

12 Q. Ms. Thomas, based on your experience with people who
13 cannot read, is it your opinion that they are typically
14 embarrassed or ashamed of that fact?

15 A. Oh, yes.

16 Q. And that they wouldn't normally tell other people that
17 they could not read?

18 A. Absolutely. I've seen people go to great measures to
19 have people not know that they cannot read.

20 Q. Do you know whether Mr. Gunnings was embarrassed about
21 the fact that he couldn't read?

22 A. Oh, yes, I know he was.

23 Q. Did he tell you that?

24 A. Yes. He not only told me with words, but his demeanor
25 told me.

1 Q. Now I just want to make sure. Were you his tutor in
2 December of two thousand six?

3 A. Yes.

4 Q. And based on the form that I showed you and the words
5 that were in that form, as of December two thousand six could
6 he read those words?

7 A. No.

8 Q. Could he understand those words?

9 A. If we talked about it and somebody told him what the word
10 was, he would understand.

11 Q. But if he were left to read it on his own, he would not
12 be able to?

13 A. No, because he couldn't read the word. He wouldn't know
14 what we were dealing with.

15 Q. Thank you. No further questions.

16 CROSS EXAMINATION

17 BY MR. BRUNSON OF PATSY THOMAS:

18 Q. Ms. Thomas, the best you can remember is you started
19 working with Mr. Gunnings in approximately March of oh six.

20 A. Right. It was about March of oh six, yes.

21 Q. And he had help from your facility as early as when he
22 was fourteen?

23 A. Yes.

24 Q. What progress had he made over the years?

25 A. He was still needing a lot of help when I was working

1 with him.

2 Q. But what progress had he made?

3 A. Well, I can't actually answer that because we don't
4 document progress per se.

5 Q. "Indictment" is one of the words that you specifically
6 said he couldn't understand.

7 A. Correct, or read.

8 Q. Or read. I misspoke. Thank you.

9 He could understand it?

10 A. I don't know if he could understand that particular word
11 or not. I would doubt that he could.

12 Q. Suppose that had been explained to him in a prior
13 criminal proceeding.

14 A. It would probably depend on how much time had elapsed.

15 Q. Were you aware that he was indicted in Georgia in
16 September, specifically on September the twenty-first two
17 thousand six in Georgia?

18 A. No, I wouldn't.

19 Q. You didn't know that?

20 A. You mean at that time?

21 Q. That on that date, September twenty-first, two thousand
22 six, that he was indicted in Georgia.

23 A. I do know that now, but I did not know that prior to this
24 trial.

25 Q. And do you know that during this trial there has been

1 testimony that he made appearances in court on November the
2 sixth, two thousand and six and December the fourth of two
3 thousand and six when the indictment was explained to him?

4 A. I was not aware of that.

5 Q. Would that make a difference in his understanding of the
6 word "indictment"?

7 A. Not really to me. Not with what I know of Pierre. I
8 would think he might still misunderstand it.

9 Q. Would he be able to recognize that word since he had seen
10 it?

11 A. I don't know.

12 Q. But he could have?

13 A. I guess it's possible, but I wouldn't think so.

14 Q. Thank you.

15 REDIRECT EXAMINATION

16 BY MS. MASON OF PATSY THOMAS:

17 Q. Ms. Thomas, would Pierre hearing the word "indictment"
18 translate to his ability to see it on a piece of paper and
19 know that was the word that was verbalized to him?

20 A. No.

21 Q. Thank you. No further questions.

22 THE COURT: Anything else?

23 MR. BRUNSON: No, Your Honor.

24 THE COURT: Thank you. You may step down.

25 (Whereupon the witness, Patsy Thomas, stepped down

1 from the stand.)

2 THE COURT: Next witness.

3 MR. BETHEL: No more witnesses, Your Honor, other
4 than the witness we spoke about for tomorrow.

5 THE COURT: Do you anticipate any rebuttal, Mr.
6 Brunson? Or do you want to take up that other matter?

7 MR. BRUNSON: Yes, Your Honor.

8 THE COURT: So we may be down to one witness, then.
9 How long is that witness going to take?

10 MR. BETHEL: It will be very short, Your Honor.

11 THE COURT: All right, then. We'll start back at
12 nine o'clock tomorrow.

13 Does that pose a problem for anyone?

14 (Whereupon, there was no response.

15 THE COURT: If you can be here promptly by fifteen
16 of nine so we can start at nine o'clock, we'll have that
17 witness.

18 How long do you need for your closing arguments?

19 MR. BRUNSON: Thirty minutes, Your Honor.

20 MR. BETHEL: That's plenty, Your Honor.

21 THE COURT: Thirty minutes as to each side. We can
22 finish the evidence by nine-thirty. Closing arguments by
23 ten-thirty. My charge will take maybe twenty minutes.
24 Eleven clock you should have the case to begin your
25 deliberations. So let's start promptly at nine.

1 Turn your notes over in your chairs. Leave your
2 notes in your chairs.

3 Don't forget to discuss the case among yourselves
4 or with anyone else. And that includes family and friends.

5 And I'll see you back here at eight forty-five
6 tomorrow.

7 (Whereupon, the proceedings were concluded.)

8 * * * * *

9 COURT REPORTER'S CERTIFICATE

10

11 I certify that the foregoing is a correct
12 transcript from the record of proceedings in the
13 above-entitled matter as prepared by me to the best of
14 my ability.

15

16 I further certify that I am not related to any of
17 the parties hereto, nor their counsel, and I have no
18 interest in the outcome of said cause.

19

20 Dated this 2nd day of June 2008.

21

22

23 \s\ Mitchell P. Reisner, CM, CRR
24 MITCHELL P. REISNER, CM, CRR
25 Official US Dist. Court Reporter
Registered Professional Reporter
Certified Real-Time Reporter

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